

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, )  
 ) CR-18-00258-EJD  
 PLAINTIFF, )  
 ) SAN JOSE, CALIFORNIA  
 VS. )  
 ) MAY 10, 2022  
 RAMESH "SUNNY" BALWANI, )  
 ) VOLUME 27  
 DEFENDANT. )  
 ) PAGES 5023 - 5286

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TRANSCRIPT OF TRIAL PROCEEDINGS  
BEFORE THE HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: JOHN C. BOSTIC  
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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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BY: MARIO C. SCUSSEL

UNITED STATES FOOD & DRUG  
ADMINISTRATION  
BY: GEORGE SCAVDIS

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1 SAN JOSE, CALIFORNIA

MAY 10, 2022

2 P R O C E E D I N G S

09:08AM 3 (COURT CONVENED AT 9:08 A.M.)

09:08AM 4 (JURY OUT AT 9:08 A.M.)

09:08AM 5 THE COURT: WE'RE ON THE RECORD IN THE BALWANI  
09:08AM 6 MATTER.

09:08AM 7 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:08AM 8 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

09:08AM 9 I UNDERSTAND -- WERE THERE SOME THINGS WE SHOULD RAISE  
09:08AM 10 BEFORE WE CONTINUE WITH MS. BENNETT? SHE'S NOT IN THE  
09:08AM 11 COURTROOM NOW, IS SHE, THE WITNESS? I DON'T SEE HER. NO.

09:08AM 12 MR. LEACH: SHE IS NOT, YOUR HONOR.

09:09AM 13 THE COURT: GREAT. THANK YOU.

09:09AM 14 I THINK OUR JURY IS HERE AND WE'RE READY TO START.

09:09AM 15 ANYTHING WE SHOULD TOUCH ON BEFORE WE BEGIN?

09:09AM 16 MR. CAZARES: YOUR HONOR, THERE'S ONE ISSUE  
09:09AM 17 REGARDING AN EXHIBIT THAT WE EXPECT THE GOVERNMENT TO USE WITH  
09:09AM 18 MR. MOSLEY LATER TODAY, AND WE THINK WE DO HAVE SOME OBJECTIONS  
09:09AM 19 WE WOULD LIKE TO RAISE WITH THE COURT BEFORE MR. MOSLEY TAKES  
09:09AM 20 THE STAND.

09:09AM 21 WE CAN DO THAT NOW, OR WE CAN DO IT AFTER MS. BENNETT  
09:09AM 22 CONCLUDES. I DON'T FEEL STRONGLY EITHER WAY.

09:09AM 23 THE COURT: OKAY. MR. LEACH OR MR. SCHENK?

09:09AM 24 MR. SCHENK: AT THE COURT'S PLEASURE.

09:09AM 25 MR. MOSLEY WILL BE THE NEXT GOVERNMENT WITNESS, AND I'M

09:09AM 1 NOT SURE EXACTLY HOW LONG THE DEFENSE'S CROSS WILL TAKE.

09:09AM 2 THE COURT: RIGHT. I THINK WHEN WE WERE TOGETHER

09:09AM 3 LAST WEEK, COUNSEL SAID HE HAD ABOUT 12 MINUTES TO GO.

09:09AM 4 MR. CAZARES: I'M SHOOTING FOR IT, YOUR HONOR.

09:09AM 5 BUT I SUSPECT MAYBE LESS THAN AN HOUR WITH MS. BENNETT.

09:09AM 6 THE COURT: OKAY. WELL, WHY DON'T WE GET STARTED

09:09AM 7 WITH MS. BENNETT? WE'RE ALREADY A LITTLE LATE BECAUSE OF SOME

09:10AM 8 OTHER MATTERS I HAD TO HANDLE.

09:10AM 9 SO WHY DON'T WE HAVE MS. BENNETT COME ON. WE'LL START HER

09:10AM 10 TESTIMONY AND SEE WHERE WE ARE AS FAR AS BREAKING, AND THEN WE

09:10AM 11 CAN TOUCH ON WHAT'S NEXT.

09:10AM 12 MR. CAZARES: YES, YOUR HONOR.

09:10AM 13 THE COURT: GREAT. OKAY.

09:10AM 14 SO CHECK AND SEE IF THEY'RE HERE.

09:10AM 15 THE CLERK: THEY'RE ALL HERE.

09:10AM 16 THE COURT: THEY'RE HERE.

09:14AM 17 (PAUSE IN PROCEEDINGS.)

09:14AM 18 (JURY IN AT 9:14 A.M.)

09:14AM 19 THE COURT: THANK YOU FOR YOUR COURTESY. PLEASE BE

09:14AM 20 SEATED. GOOD MORNING EVERYONE.

09:15AM 21 WELCOME BACK, LADIES AND GENTLEMEN OF THE JURY.

09:15AM 22 ALL COUNSEL ARE PRESENT. MR. BALWANI IS PRESENT.

09:15AM 23 OUR JURY IS PRESENT.

09:15AM 24 I HOPE EVERYONE HAD A PLEASANT WEEKEND.

09:15AM 25 BEFORE WE RESUME THE TESTIMONY OF MS. BENNETT, LET ME ASK

09:15AM 1 OUR JURORS, DURING THE BREAK, DID ANY OF YOU HAVE CAUSE TO  
09:15AM 2 READ, LEARN, DISCUSS, VIEW, OR DO ANYTHING IN REGARDS TO  
09:15AM 3 LEARNING ANYTHING ABOUT THIS CASE?

09:15AM 4 IF SO, PLEASE RAISE YOUR HANDS.

09:15AM 5 ONCE AGAIN, I SEE NO HANDS. THANK YOU VERY MUCH. I  
09:15AM 6 APPRECIATE THAT.

09:15AM 7 AND IS MS. BENNETT HERE? LET'S HAVE HER RETURN.

09:15AM 8 GOOD MORNING, MS. BENNETT.

09:15AM 9 THE WITNESS: GOOD MORNING.

09:15AM 10 THE COURT: THANKS FOR COMING BACK.

09:15AM 11 PLEASE FEEL FREE TO MAKE YOURSELF COMFORTABLE.

09:16AM 12 I'LL JUST REMIND YOU THAT YOU'RE STILL UNDER OATH.

09:16AM 13 WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR NAME  
09:16AM 14 AGAIN, PLEASE.

09:16AM 15 THE WITNESS: MY NAME IS SARAH BENNETT.

09:16AM 16 THE COURT: THANK YOU.

09:16AM 17 **(GOVERNMENT'S WITNESS, SARAH BENNETT, WAS PREVIOUSLY**  
09:16AM 18 **SWORN.)**

09:16AM 19 THE COURT: THANK YOU. COUNSEL.

09:16AM 20 MR. CAZARES: THANK YOU, YOUR HONOR.

09:16AM 21 **CROSS-EXAMINATION (RESUMED)**

09:16AM 22 BY MR. CAZARES:

09:16AM 23 Q. GOOD MORNING.

09:16AM 24 A. GOOD MORNING.

09:16AM 25 Q. SO I WANTED TO REMIND THE JURY WHERE WE ARE WHEN WE LEFT

09:16AM 1 OFF LAST WEEK, AND WE TALKED ABOUT THIS DIVISION OF LABOR  
09:16AM 2 BETWEEN YOURSELF AND MR. YAMAMOTO WITH RESECT TO THE SURVEY.

09:16AM 3 DO YOU RECALL THOSE DISCUSSIONS?

09:16AM 4 A. YES.

09:16AM 5 Q. OKAY. AND I THINK YOU MENTIONED THAT, WITH RESPECT TO THE  
09:16AM 6 WORK THAT YOU DID IN THE SURVEY AND REFLECTED IN THE SURVEY  
09:16AM 7 REPORT, THAT YOU DID NOT SURVEY THE FINGERSTICK PART OF THE  
09:16AM 8 LABORATORY; IS THAT CORRECT?

09:16AM 9 A. I DID NOT.

09:16AM 10 Q. AND THAT WOULD INCLUDE THEN THAT YOU DID NOT EXAMINE ANY  
09:16AM 11 OF THE FINGERSTICK TESTING ON THE MODIFIED PREDICATE DEVICES;  
09:16AM 12 IS THAT RIGHT?

09:16AM 13 A. CORRECT.

09:16AM 14 Q. OKAY. NOW, YOU DID EXAMINE TESTING RELATING TO THE  
09:17AM 15 PT INR, THE COAGULATION TEST; CORRECT?

09:17AM 16 A. I DID.

09:17AM 17 Q. BUT OTHER THAN THAT, YOU DIDN'T EXAMINE ANY OF THE  
09:17AM 18 TRADITIONAL VENOUS BLOOD TESTING; CORRECT?

09:17AM 19 A. I MAY HAVE, IF I REMEMBER CORRECTLY, REVIEWED SOME OF THE  
09:17AM 20 QUALITY CONTROL DATA AND THE PERFORMANCE SPECIFICATIONS.

09:17AM 21 Q. OKAY. NOW, GETTING BACK TO THAT PT INR TEST, THAT WAS THE  
09:17AM 22 TEST THAT WAS THE SUBJECT OF A CONDITION LEVEL NONCOMPLIANCE;  
09:17AM 23 CORRECT?

09:17AM 24 A. YES.

09:17AM 25 Q. AND THE PT INR WAS ALSO THE SUBJECT OF THE IMMEDIATE



09:17AM 1 JEOPARDY FINDING; CORRECT?

09:17AM 2 A. IT WAS PART OF THE IMMEDIATE JEOPARDY, YES.

09:17AM 3 Q. OKAY. AND THAT PT INR TEST, THE ISSUES FOR THAT TEST WERE

09:17AM 4 THERE WAS A REAGENT STABILITY ISSUE; CORRECT?

09:17AM 5 A. YES.

09:17AM 6 Q. THERE WERE SOME QUALITY CONTROL ISSUES; CORRECT?

09:17AM 7 A. YES.

09:17AM 8 Q. AND THEN THERE WAS AN ISSUE RELATING TO THE CALCULATION OF

09:17AM 9 THE RESULTS; CORRECT?

09:17AM 10 A. YES.

09:18AM 11 Q. AND THAT PT INR TEST, THAT WAS RUN ON A SIEMENS MACHINE;

09:18AM 12 CORRECT?

09:18AM 13 A. I BELIEVE IT WAS A SIEMENS, YES.

09:18AM 14 Q. OKAY. AND THAT'S AN FDA APPROVED COMMERCIAL DEVICE;

09:18AM 15 CORRECT?

09:18AM 16 A. YES.

09:18AM 17 Q. AND THEN THE REAGENT, THAT STABILITY ISSUE, THAT REAGENT

09:18AM 18 WAS MADE BY A COMPANY, NOT THERANOS; CORRECT?

09:18AM 19 A. THAT IS CORRECT.

09:18AM 20 Q. OKAY. YOU SHOULD HAVE SOME BINDERS THERE IN FRONT OF YOU.

09:18AM 21 IF YOU COULD TAKE A LOOK AT THE GOVERNMENT'S BINDER, THE

09:18AM 22 WHITE BINDER, AT 4621.

09:18AM 23 WE CAN ALSO PUT IT UP ON THE SCREEN. IF WE CAN LOOK AT

09:18AM 24 PAGE 16, UNDER D-TAG 5413.

09:18AM 25 AND YOU CAN LOOK ON THE BINDER OR ON THE SCREEN,

09:18AM 1 MS. BENNETT. IT WILL BE IN BOTH.

09:18AM 2 AND I WANT TO DRAW YOUR ATTENTION TO, AT THE BOTTOM OF

09:18AM 3 PAGE -- WELL, ACTUALLY, AT THE BOTTOM OF PAGE 17, SO THE BOTTOM

09:19AM 4 OF PAGE 17 THERE'S D5413.

09:19AM 5 DO YOU SEE THAT?

09:19AM 6 A. I DO.

09:19AM 7 Q. AND IT RELATES TO TEST SYSTEMS, EQUIPMENT, INSTRUMENTS,

09:19AM 8 REAGENT.

09:19AM 9 DO YOU SEE THAT?

09:19AM 10 A. I DO.

09:19AM 11 Q. AND THEN THERE'S A DESCRIPTION OF THE REQUIREMENT, "THE

09:19AM 12 LABORATORY MUST DEFINE CRITERIA FOR THOSE CONDITIONS THAT ARE

09:19AM 13 ESSENTIAL FOR PROPER STORAGE OF REAGENTS AND SPECIMENS,

09:19AM 14 ACCURATE AND RELIABLE TEST SYSTEM OPERATION, AND TEST RESULT

09:19AM 15 REPORTING."

09:19AM 16 DO YOU SEE THAT?

09:19AM 17 A. I DO.

09:19AM 18 Q. AND THEN THE SURVEY REPORT CONTINUES. "THE CRITERIA MUST

09:19AM 19 BE CONSISTENT WITH THE MANUFACTURER'S INSTRUCTIONS, IF

09:19AM 20 PROVIDED. THESE CONDITIONS MUST BE MONITORED AND DOCUMENTED

09:19AM 21 AND, IF APPLICABLE, INCLUDE THE FOLLOWING," AND THERE'S A LIST

09:19AM 22 OF CONDITIONS THAT HAVE TO BE MONITORED.

09:19AM 23 DO YOU SEE THAT?

09:19AM 24 A. I DO.

09:19AM 25 Q. AND THEN ON THE NEXT PAGE, PAGE 18, THIS ISSUE IS

09:19AM 1 IDENTIFIED AS A STANDARD LEVEL NONCOMPLIANCE.

09:19AM 2 DO YOU SEE THAT?

09:19AM 3 A. I DO.

09:19AM 4 Q. AND THEN IF WE CONTINUE ONTO PAGE, AT THE BOTTOM, PAGE 18,

09:20AM 5 ITEM 2.

09:20AM 6 DO YOU SEE THAT?

09:20AM 7 A. I DO.

09:20AM 8 Q. AND IS THIS THE PT INR REAGENT STABILITY ISSUE THAT YOU

09:20AM 9 IDENTIFY?

09:22AM 10 A. YES.

09:22AM 11 Q. AND JUST SO THE JURY UNDERSTANDS, SO YOU WROTE THAT

09:22AM 12 REVIEW, "BASED ON REVIEW OF THE PROCEDURE, MANUFACTURE PACKAGE

09:22AM 13 INSERT AND OBSERVATION, THE LABORATORY FAILED TO FOLLOW THE

09:22AM 14 MANUFACTURER INSTRUCTIONS FOR EXPIRATION DATE OF INNOVIN USED

09:22AM 15 FOR PROTHROMBIN TIME/INTERNATIONAL NORMALIZED RATIO TESTING."

09:22AM 16 DO YOU SEE THAT?

09:22AM 17 A. I DO.

09:22AM 18 Q. AND INNOVIN, THAT'S THE REAGENT; CORRECT?

09:22AM 19 A. YES.

09:22AM 20 Q. AND IT'S MADE BY A COMPANY CALLED DADE; IS THAT RIGHT?

09:22AM 21 A. I BELIEVE SO, YES.

09:22AM 22 Q. AND THAT'S A COMMERCIALY MADE REAGENT?

09:22AM 23 A. IT IS.

09:22AM 24 Q. AND AT SUB A, YOU IDENTIFIED HERE IN THE SURVEY REPORT

09:22AM 25 THAT "DADE INNOVIN LOT NUMBER 539280 WAS PUT INTO USE BY THE

09:22AM 1 LABORATORY AT THE END OF MARCH 2015."

09:22AM 2 DO YOU SEE THAT?

09:22AM 3 A. I DO.

09:22AM 4 Q. AND SO YOU IDENTIFY SOME RECORDS THAT SHOWED THE LAB

09:22AM 5 STARTED TO USE THIS LOT OF REAGENT IN MARCH OF 2015; IS THAT  
09:22AM 6 CORRECT?

09:22AM 7 A. YES.

09:22AM 8 Q. AND THEN AT SUB B, THE REPORT READS, "THE GENERAL  
09:22AM 9 SUPERVISOR STATED THAT THE PACKAGE INSERTS WERE USUALLY WHITE."  
09:22AM 10 WAS THAT YOUR FINDING?

09:22AM 11 A. YES.

09:22AM 12 Q. AND THEN SUB C READS, "THE PACKAGE INSERT FOR LOT NUMBER  
09:22AM 13 539280 WAS PINK WHICH INDICATED THAT THE MANUFACTURER HAD  
09:22AM 14 INCLUDED SPECIAL INSTRUCTIONS FOR THE SPECIFIC LOT NUMBER OF  
09:22AM 15 INNOVIN."

09:22AM 16 DO YOU SEE THAT?

09:22AM 17 A. I DO.

09:22AM 18 Q. OKAY. AND THEN AT SUB D, THE SURVEY REPORT READS, "SURVEY  
09:22AM 19 REVIEW OF THE PI REVEALED AN IMPORTANT NOTE THAT THIS SPECIFIC  
09:22AM 20 LOT NUMBER WAS ONLY STABLE FOR 2 DAYS INSTEAD OF 10 DAYS AFTER  
09:22AM 21 RECONSTITUTION."

09:22AM 22 DO YOU SEE THAT?

09:22AM 23 A. I DO.

09:22AM 24 Q. SO DOES THAT MEAN PRIOR TO THE COMPANY'S INSTITUTION OF  
09:22AM 25 THIS LOT NUMBER REAGENT, THE STABILITY OF THE INNOVIN WAS TEN

09:22AM 1 DAYS?

09:22AM 2 A. I CAN'T SAY IF THE PREVIOUS LOT NUMBERS WERE FOR TEN DAYS

09:22AM 3 UNLESS I WOULD SEE THE PACKAGE INSERT.

09:22AM 4 Q. OKAY. BUT HERE IN YOUR REPORT YOU WROTE THAT "THIS

09:22AM 5 SPECIFIC LOT NUMBER WAS ONLY STABLE FOR 2 DAYS INSTEAD OF

09:22AM 6 10 DAYS."

09:22AM 7 A. CORRECT.

09:22AM 8 Q. OKAY.

09:22AM 9 SO FOR THIS LOT, INSTEAD OF TEN, IT WAS DOWN TO TWO; IS

09:22AM 10 THAT CORRECT?

09:22AM 11 A. YES.

09:22AM 12 Q. AND THAT'S BECAUSE THE COMPANY CHANGED THE TIME PERIOD FOR

09:22AM 13 THE STABILITY FOR THE USE OF THIS REAGENT; CORRECT?

09:22AM 14 A. YES.

09:22AM 15 Q. AND THAT'S NOT EXACTLY THE SAME, BUT SOMETHING LIKE THE

09:22AM 16 MILK EXPIRATION DATE, DON'T USE IT AFTER X DATE; CORRECT?

09:22AM 17 A. FOR REAGENTS, IF AN EXPIRATION DATE IS DEFINED BY THE

09:23AM 18 MANUFACTURER OR THE LABORATORY, THEY CANNOT USE IT PAST THE

09:23AM 19 DATE.

09:23AM 20 I PERSONALLY DO USE MILK PAST THE EXPIRATION DATE

09:23AM 21 SOMETIMES.

09:23AM 22 (LAUGHTER.)

09:23AM 23 BY MR. CAZARES:

09:23AM 24 Q. BUT IN SOME INSTANCES A LAB COULD USE THE REAGENT AFTER

09:23AM 25 THE EXPIRATION DATE IF THEY DID SOME STUDIES TO DETERMINE

09:23AM 1 WHETHER OR NOT THE STABILITY MIGHT BE LONGER THAN THE

09:23AM 2 MANUFACTURER IDENTIFIED, COULDN'T THEY?

09:23AM 3 A. THEY CAN.

09:23AM 4 Q. SO IT'S NOT NECESSARILY A HARD DATE, BUT IT'S A HARD DATE

09:23AM 5 UNLESS YOU'VE DONE SOME WORK TO DETERMINE THAT THE REAGENT MAY

09:23AM 6 BE STABLE BEYOND WHAT THE MANUFACTURER SAID; CORRECT?

09:23AM 7 A. YES, IT IS A HARD DATE UNLESS THEY DO THE EXTRA WORK.

09:23AM 8 Q. FAIR ENOUGH.

09:23AM 9 AND IN THIS INSTANCE, THE INSERT IS A DIFFERENT COLOR?

09:23AM 10 IT'S PINK INSTEAD OF WHITE; CORRECT?

09:23AM 11 A. YES.

09:23AM 12 Q. AND THEN YOU IDENTIFY THAT THE "THE CURRENT VIAL OF

09:23AM 13 INNOVIN REAGENT WAS OBSERVED IN THE 2-8 CELSIUS REFRIGERATOR

09:24AM 14 WITH A 5 DAY EXPIRATION DATE."

09:24AM 15 DO YOU SEE THAT?

09:24AM 16 A. I DO.

09:24AM 17 Q. SO DID YOU YOURSELF GO IN THE REFRIGERATOR AND SEE THE

09:24AM 18 INNOVIN IN THE FRIDGE?

09:24AM 19 A. I DID.

09:24AM 20 Q. AND THERE WAS A TYPEWRITTEN LABEL?

09:24AM 21 A. IT WAS A HANDWRITTEN LABEL.

09:24AM 22 Q. AND THE LABEL YOU SAW WAS FIVE DAYS?

09:24AM 23 A. IT WAS FIVE DAYS. THE EXPIRATION ON THE VIAL WAS WRITTEN

09:24AM 24 FIVE DAYS AFTER THE OPEN DAY WAS WRITTEN ON THE BOTTOM.

09:24AM 25 Q. AND THE STABILITY INDICATED CHANGED FROM TEN TO TWO DAYS;

09:24AM 1

CORRECT?

09:24AM 2

A. YES.

09:24AM 3

Q. PER THAT PINK LITTLE SHEET?

09:24AM 4

A. YES.

09:24AM 5

Q. OKAY. AND THEN AT SUB F, IN THIS SECTION YOU WROTE, "CL

09:24AM 6

SOP-10001 REVISION A, 'MEASURING PROTHROMBIN TIME' STATED ON

09:24AM 7

PAGE 2 SECTION 12.1 THAT THE PACKAGE INSERT FOR NEW LOT MUST BE

09:24AM 8

REVIEWED FOR ANY CHANGES BEFORE USE."

09:24AM 9

DO YOU SEE THAT?

09:24AM 10

A. YES.

09:24AM 11

Q. AND SO THAT'S THE LAB'S POLICY; RIGHT?

09:25AM 12

A. YES.

09:25AM 13

Q. IS THAT RIGHT?

09:25AM 14

A. YES.

09:25AM 15

Q. OKAY. AND AT SUB G YOU WROTE, "THE GENERAL SUPERVISOR

09:25AM 16

CONFIRMED ON 9/23/15 THAT THE CHANGE IN STORAGE AND STABILITY

09:25AM 17

OF THE INNOVIN REAGENT HAD NOT BEEN IDENTIFIED FROM MARCH 2015

09:25AM 18

THROUGH SEPTEMBER 2015."

09:25AM 19

DO YOU SEE THAT?

09:25AM 20

A. I DO.

09:25AM 21

Q. AND SO THE GENERAL SUPERVISOR WAS ONE OF THE LAB PERSONNEL

09:25AM 22

YOU SPOKE WITH?

09:25AM 23

A. YES, I INTERVIEWED THE GENERAL SUPERVISOR.

09:25AM 24

Q. AND THE GENERAL SUPERVISOR INDICATED TO YOU THAT THE LAB

09:25AM 25

STAFF WERE UNAWARE OF THE CHANGE IN STABILITY; CORRECT?

09:25AM 1 A. FROM MARCH 2015 THROUGH SEPTEMBER 2015.

09:25AM 2 Q. OKAY. AND THAT VIOLATED THE LAB'S POLICY?

09:25AM 3 A. YES, AND THE REGULATIONS.

09:25AM 4 Q. IF YOU TAKE A LOOK AT PAGE 40. ON PAGE 40, THREE QUARTERS

09:26AM 5 OF THE WAY UP, THERE'S A D-TAG 5481.

09:26AM 6 DO YOU SEE THAT?

09:26AM 7 A. I DO.

09:26AM 8 Q. AND IT SAYS CONTROL PROCEDURES.

09:26AM 9 DO YOU SEE THAT?

09:26AM 10 A. YES.

09:26AM 11 Q. AND THEN THIS REQUIREMENT STATES, "RESULTS OF CONTROL

09:26AM 12 MATERIALS MUST MEET THE LABORATORY'S AND AS APPLICABLE THE

09:26AM 13 MANUFACTURER'S TEST SYSTEM CRITERIA FOR ACCEPTABILITY BEFORE

09:26AM 14 REPORTING PATIENT TEST RESULTS."

09:26AM 15 DO YOU SEE THAT?

09:26AM 16 A. I DO.

09:26AM 17 Q. AND SO DOES THAT MEAN ESSENTIALLY QUALITY CONTROL NEEDS TO

09:26AM 18 PASS BEFORE PATIENT RESULTS ARE REPORTED?

09:26AM 19 A. YES.

09:26AM 20 Q. AND THIS IS ANOTHER STANDARD LEVEL DEFICIENCY; CORRECT?

09:26AM 21 A. IT IS.

09:26AM 22 Q. AND THEN UNDER ITEM 1, IT SAYS, "BASED ON THE REVIEW OF

09:26AM 23 THE PROTHROMBIN TIME/INTERNATIONAL NORMALIZED RATIO PROCEDURE,

09:26AM 24 QUALITY CONTROL RECORDS, PATIENT RESULTS AND INTERVIEW WITH THE

09:26AM 25 GENERAL SUPERVISOR, THE LABORATORY FAILED TO ENSURE THAT THE QC



09:27AM 1 FOR PT INR WAS ACCEPTABLE PRIOR TO REPORTING PATIENT RESULTS  
09:27AM 2 FROM APRIL 2015 THROUGH SEPTEMBER 2015."

09:27AM 3 DO YOU SEE THAT?

09:27AM 4 A. I DO.

09:27AM 5 Q. OKAY. THEN THE NEXT SUB A, THERE'S A "CL SOP-1001  
09:27AM 6 REVISION A MEASURING PROTHROMBIN TIME-INNOVIN (TP ON THE  
09:27AM 7 SIEMENS BCS XP INSTRUMENT) ."

09:27AM 8 DO YOU SEE THAT?

09:27AM 9 A. I DO.

09:27AM 10 Q. AND IT SAYS, "AS STATED ON THE PAGE 6, SECTION 8.6 THAT IF  
09:27AM 11 CONTROL VALUES ARE OUTSIDE OF THE DETERMINED RANGE, THE  
09:27AM 12 CONTROLS, REAGENTS, AND INSTRUMENT PERFORMANCE SHOULD BE  
09:27AM 13 CHECKED AND THAT IDENTIFICATION AND CORRECTION OF THE PROBLEM  
09:27AM 14 SHOULD BE DOCUMENTED PRIOR TO REPORTING PATIENT RESULTS."

09:27AM 15 DO YOU SEE THAT?

09:27AM 16 A. I DO.

09:27AM 17 Q. AND SO, AGAIN, THIS IS A TEST RUN ON THE SIEMENS BCS XP  
09:27AM 18 DEVICE; CORRECT?

09:27AM 19 A. IT IS.

09:27AM 20 Q. AND THEN IT LOOKS LIKE AT SUB B, C, AND THEN CONTINUE ON  
09:28AM 21 THE NEXT PAGE, YOU REVIEWED QC RECORDS FOR CITROL IN THAT APRIL  
09:28AM 22 TO SEPTEMBER TIME PERIOD; IS THAT RIGHT?

09:28AM 23 A. YES.

09:28AM 24 Q. AND CITROL IS A COMMERCIALY AVAILABLE QUALITY CONTROL  
09:28AM 25 MATERIAL?

09:28AM 1 A. IT IS.

09:28AM 2 Q. AND THEN AT SUB C YOU WROTE THAT "THE GENERAL SUPERVISOR  
09:28AM 3 STATED THAT QC WAS ACCEPTABLE IF THE VALUES WERE PLUS MINUS 2  
09:28AM 4 SD FROM THE MEAN."

09:28AM 5 DO YOU SEE THAT?

09:28AM 6 A. I DO.

09:28AM 7 Q. AND THEN IT LOOKS LIKE YOU IDENTIFIED D, E, F, AND G,  
09:28AM 8 INSTANCES WHERE THAT REQUIREMENT WASN'T MET; IS THAT FAIR?

09:28AM 9 A. YES.

09:28AM 10 Q. AND THEN AT SUB I YOU IDENTIFIED THAT THERE WERE 81  
09:28AM 11 PATIENTS REPORTED DURING THAT TIME PERIOD WHEN QUALITY CONTROL  
09:28AM 12 WAS NOT PASSING ON THE SIEMENS DEVICE; CORRECT?

09:28AM 13 A. YES.

09:28AM 14 Q. AND THIS CONTRIBUTED TO THAT CONDITION LEVEL DEFICIENCY?

09:28AM 15 A. IT DID.

09:29AM 16 Q. AND THEN IF WE CAN TAKE A LOOK AT PAGE 73.

09:29AM 17 AT 73 THERE'S A D-TAG 5801.

09:29AM 18 DO YOU SEE THAT?

09:29AM 19 A. YES.

09:29AM 20 Q. AND IT SAYS, "THE LABORATORY MUST HAVE AN ADEQUATE MANUAL  
09:29AM 21 OR ELECTRONIC SYSTEMS IN PLACE TO ENSURE TEST RESULTS AND OTHER  
09:29AM 22 PATIENT-SPECIFIC DATA ARE ACCURATELY AND RELIABLY SENT FROM THE  
09:29AM 23 POINT OF DATA ENTRY (WHETHER INTERFACED OR ENTERED MANUALLY) TO  
09:29AM 24 FINAL REPORT DESTINATION, IN A TIMELY MANNER. THIS INCLUDES  
09:29AM 25 THE FOLLOWING."

09:29AM 1 AND THEN THERE ARE SOME DESCRIPTIONS.

09:29AM 2 "RESULTS REPORTED FROM CALCULATED DATA.

09:29AM 3 "RESULTS TO NETWORK OR INTERFACED SYSTEMS."

09:29AM 4 AND THEN THE LAST ITEM SAYS, "MANUALLY TRANSCRIBED OR  
09:30AM 5 ELECTRONICALLY TRANSMITTED RESULTS AND PATIENT-SPECIFIC  
09:30AM 6 INFORMATION REPORTED DIRECTLY OR UPON RECEIPT FROM OUTSIDE  
09:30AM 7 REFERRAL LABORATORIES, SATELLITE OR POINT-OF-CARE TESTING  
09:30AM 8 LOCATIONS."

09:30AM 9 DO YOU SEE THAT?

09:30AM 10 A. YES, TESTING LOCATIONS, YES.

09:30AM 11 Q. AND THEN THIS IS ANOTHER STANDARD LEVEL NONCOMPLIANCE?

09:30AM 12 A. YES.

09:30AM 13 Q. AND THIS RELATES TO THE CALCULATION OF THE PT INR RESULTS;  
09:30AM 14 IS THAT RIGHT?

09:30AM 15 A. YES.

09:30AM 16 Q. NOW, IN THE REPORT UNDER THE STANDARD YOU WROTE, "BASED ON  
09:30AM 17 REVIEW OF THE PATIENT RESULTS, MANUFACTURER INTERNATIONAL  
09:30AM 18 SENSITIVITY INDEX NUMBER," I'LL STOP RIGHT THERE.

09:30AM 19 WHAT IS THAT?

09:30AM 20 A. THAT IS A NUMBER THAT THE MANUFACTURER PROVIDED FOR EACH  
09:30AM 21 LOT NUMBER OF THROMBOPLASTIN, WHICH IS ALSO INNOVIN.

09:30AM 22 Q. AND THIS NUMBER, THIS ISI NUMBER, YOU SAID IS DETERMINED  
09:31AM 23 BY THE MANUFACTURER?

09:31AM 24 A. IT IS.

09:31AM 25 Q. SO HERE THAT WOULD BE SIEMENS?

09:31AM 1 A. YES.

09:31AM 2 Q. OKAY. AND THAT'S DETERMINED BY THE MANUFACTURER DOING

09:31AM 3 SOME SORT OF A STUDY?

09:31AM 4 A. IT WOULD BE BY DADE. THEY'RE THE ONES THAT MAKE IT.

09:31AM 5 SORRY.

09:31AM 6 Q. I LED YOU TO THAT.

09:31AM 7 A. SORRY.

09:31AM 8 Q. SO THE ISI NUMBERS ARE PROVIDED BY DADE, THE MANUFACTURER

09:31AM 9 OF THE REAGENT?

09:31AM 10 A. YES.

09:31AM 11 Q. OKAY. AND THAT'S DETERMINED USING A STUDY?

09:31AM 12 A. I DON'T KNOW HOW THE MANUFACTURER DETERMINES THE ISI.

09:31AM 13 Q. OKAY. BUT IT'S PROVIDED BY THE MANUFACTURER?

09:31AM 14 A. YES.

09:31AM 15 Q. AND THAT'S SPECIFIC TO EACH LOT NUMBER; CORRECT?

09:31AM 16 A. IT IS.

09:31AM 17 Q. AND THAT NUMBER NEEDS TO BE ENTERED INTO THE SIEMENS

09:31AM 18 DEVICE BEFORE RUNNING THE PATIENT TEST, OR THE PATIENT RESULTS;

09:31AM 19 CORRECT?

09:31AM 20 A. YES.

09:31AM 21 Q. AND THEN GETTING BACK TO THE REPORT YOU WROTE, "AND THE

09:31AM 22 LABORATORY'S MEAN NORMAL PROTHROMBIN TIME, THE LABORATORY

09:31AM 23 FAILED TO ENSURE THAT THE REPORTED INTERNATIONAL NORMALIZED

09:31AM 24 RATIO WAS CALCULATED ACCURATELY PRIOR TO REPORTING FINAL

09:31AM 25 PATIENT TEST RESULTS."

09:32AM 1 SO IN YOUR SURVEY RELATING TO THIS ISSUE, DID YOU NOT FIND  
09:32AM 2 EVIDENCE THAT THERANOS'S LAB PERSONNEL HAD DOCUMENTED AND  
09:32AM 3 ENTERED THE CORRECT ISI VALUE INTO THE MACHINE BEFORE RUNNING  
09:32AM 4 THE TEST?

09:32AM 5 A. I BELIEVE THAT I DID.

09:32AM 6 Q. OKAY. SO THEY SHOULD HAVE HAD DOCUMENTATION BACK FROM  
09:32AM 7 MARCH OF 2015, BUT WHAT THEY GAVE YOU WAS SOME DOCUMENTATION I  
09:32AM 8 THINK IT WAS FROM SEPTEMBER OF 2015; CORRECT?

09:32AM 9 A. THE DOCUMENTATION THAT THE LABORATORY HAS TO RUN IS THE  
09:32AM 10 MEAN NORMAL PROTHROMBIN TIME, AND THEY WERE UNABLE TO PRODUCE  
09:32AM 11 THAT DOCUMENTATION UNTIL SEPTEMBER, AND IT SHOULD HAVE BEEN RUN  
09:32AM 12 PRIOR TO MARCH BEFORE THEY STARTED.

09:32AM 13 Q. AND JUST TO BE CLEAR, THEY DIDN'T HAVE DOCUMENTATION OF  
09:32AM 14 RUNNING IT IN MARCH OF 2015; CORRECT?

09:32AM 15 A. THEY DID NOT.

09:32AM 16 Q. OKAY. IT COULD HAVE HAPPENED, BUT THEY'RE SUPPOSED TO  
09:32AM 17 HAVE DOCUMENTATION; CORRECT?

09:32AM 18 A. IF IT'S NOT DOCUMENTED, IT'S NOT DONE.

09:32AM 19 Q. ACCORDING TO THE REGULATIONS?

09:32AM 20 A. WELL, IN ORDER TO BE ABLE TO SUPPORT THAT IT'S BEEN DONE,  
09:33AM 21 THEY HAD TO BE ABLE TO PROVIDE THE DOCUMENTATION AND THEY COULD  
09:33AM 22 NOT.

09:33AM 23 Q. FAIR ENOUGH.

09:33AM 24 AND YOU USED THIS NUMBER YOU WERE PROVIDED IN SEPTEMBER OF  
09:33AM 25 2015 RELATING TO THE ISI NUMBER, AND YOU RECALCULATED THE

09:33AM 1 PATIENT RESULTS YOURSELF; CORRECT?

09:33AM 2 A. I USED THE ISI NUMBER AND THE DOCUMENTATION FROM SEPTEMBER  
09:33AM 3 TO RECALCULATE THE INR'S, YES.

09:33AM 4 Q. AND YOU DID THAT MANUALLY; CORRECT?

09:33AM 5 A. I DID.

09:33AM 6 Q. NOW, ORDINARILY WHEN THE ISI VALUE IS ENTERED INTO THE  
09:33AM 7 MACHINE AND THE PATIENT SAMPLE IS RUN AND PROCESSED, THE  
09:33AM 8 CALCULATION IS DONE INSIDE OF THE MACHINE; CORRECT?

09:33AM 9 A. YES.

09:33AM 10 Q. SO THIS WOULD ALL BE DONE WITHIN THE MACHINE? LAB STAFF  
09:33AM 11 WOULDN'T BE CALCULATING OR DOING THE MATH THEMSELVES; CORRECT?

09:33AM 12 A. THEY WOULD NOT.

09:33AM 13 Q. WHAT IS THE CALCULATION?

09:33AM 14 A. I DON'T KNOW THE EXACT CALCULATION FOR IT. YOU CAN  
09:34AM 15 CERTAINLY GOOGLE IT AND FIND IT.

09:34AM 16 Q. BUT YOU DID THE CALCULATION YOURSELF THOUGH?

09:34AM 17 A. RIGHT. I USED A PROGRAM TO PLUG THE NUMBERS IN AND  
09:34AM 18 RECALCULATE, YES.

09:34AM 19 Q. OKAY. AND AS A RESULT OF THE WORK THAT YOU DID, YOU CAME  
09:34AM 20 UP WITH A NUMBER THAT WAS DIFFERENT THAN WHAT WAS REPORTED TO  
09:34AM 21 PATIENTS; IS THAT RIGHT?

09:34AM 22 A. THAT'S CORRECT.

09:34AM 23 Q. AND I THINK AT SUB C YOU ITEMIZED, GETTING BACK TO  
09:34AM 24 PAGE 74, YOU SAID, "THE FINAL REPORTED RESULTS VARIED FROM THE  
09:34AM 25 TRUE RESULTS BY .1 TO .5 UNITS."

09:34AM 1 DO YOU SEE THAT?

09:34AM 2 A. I DO.

09:34AM 3 Q. AND THAT WAS THEIR CALCULATION AND WHAT THE LAB REPORTED;  
09:34AM 4 CORRECT?

09:34AM 5 A. YES.

09:34AM 6 Q. NOW, I THINK ON WEDNESDAY WE WERE TALKING ABOUT THIS ISSUE  
09:34AM 7 ABOUT WHEN IT WAS DETERMINED BY YOURSELF AND MR. YAMAMOTO THAT  
09:34AM 8 YOU WERE GOING TO CITE AN IMMEDIATE JEOPARDY FINDING.

09:34AM 9 DO YOU REMEMBER THAT?

09:34AM 10 A. I DO.

09:34AM 11 Q. AND I THINK YOU PUT THE TIME PERIOD AROUND THE END OF THE  
09:35AM 12 NOVEMBER 2015 VISIT; CORRECT?

09:35AM 13 A. IT WAS -- YES, IT WAS AFTER WE FINISHED THE ENTIRE SURVEY,  
09:35AM 14 YES.

09:35AM 15 Q. AND I GUESS, DOES IT MEAN THAT THE IJ FINDING WAS MADE  
09:35AM 16 WHEN YOU LEFT THE LABORATORY IN NOVEMBER OF 2015, OR WAS THERE  
09:35AM 17 FURTHER WORK TO BE DONE?

09:35AM 18 A. IT WAS MADE AFTER WE LEFT THE LABORATORY IN NOVEMBER.

09:35AM 19 Q. OKAY. BECAUSE YOU WERE STILL REVIEWING DOCUMENTATION;  
09:35AM 20 CORRECT?

09:35AM 21 A. YES.

09:35AM 22 Q. WITHIN THE BINDER THAT YOU SHOULD HAVE THERE IN FRONT OF  
09:35AM 23 YOU, IF YOU COULD TAKE A LOOK AT EXHIBIT OR TAB NUMBER 4600.

09:36AM 24 DO YOU HAVE 4600 UP THERE IN FRONT OF YOU?

09:36AM 25 A. I DO.

09:36AM 1 Q. OKAY. AND 4600 APPEARS TO BE AN INTERNAL EMAIL EXCHANGE  
09:36AM 2 BETWEEN YOURSELF AND SOME OF YOUR COLLEAGUES AT CMS?

09:36AM 3 A. YES.

09:36AM 4 Q. OKAY. AND THE LATER OF THE TWO MESSAGES LOOKED TO BE  
09:36AM 5 DATED DECEMBER 8TH, 2015.

09:36AM 6 DO YOU SEE THAT?

09:36AM 7 A. I DO.

09:36AM 8 Q. OKAY. AND THIS LATTER MESSAGE IS FROM YOURSELF TO A  
09:36AM 9 THOMAS HAMILTON.

09:36AM 10 DO YOU SEE THAT?

09:36AM 11 A. I DO.

09:36AM 12 Q. AND THEN COPIES TO MS. DYER AND MR. YAMAMOTO; CORRECT?

09:36AM 13 A. YES.

09:36AM 14 MR. CAZARES: MOVE TO ADMIT 4600, YOUR HONOR.

09:36AM 15 MR. LEACH: IS THIS COMING IN AS A BUSINESS RECORD?

09:36AM 16 MR. CAZARES: YES.

09:36AM 17 MR. LEACH: NO OBJECTION.

09:36AM 18 THE COURT: IT WILL BE ADMITTED, 4600, AND IT MAY BE  
09:36AM 19 PUBLISHED.

09:36AM 20 (GOVERNMENT'S EXHIBIT 4600 WAS RECEIVED IN EVIDENCE.)

09:36AM 21 BY MR. CAZARES:

09:36AM 22 Q. IF YOU TAKE A LOOK AT THE LOWER TWO MESSAGES, THERE  
09:36AM 23 APPEARS TO BE AN EMAIL AT THE BOTTOM HALF FROM MR. HAMILTON TO  
09:36AM 24 YOURSELF.

09:36AM 25 DO YOU SEE THAT?



09:36AM 1

A. I DO.

09:36AM 2

Q. AND THAT'S DECEMBER 8TH, 2015?

09:37AM 3

(PAUSE IN PROCEEDINGS.)

09:37AM 4

THE COURT: IS IT ON THE SCREEN?

09:37AM 5

JUROR: NO.

09:37AM 6

THE COURT: ALL RIGHT. IT SEEMS LIKE IT'S UP NOW.

09:37AM 7

BY MR. CAZARES:

09:37AM 8

Q. ALL RIGHT. BACK TO 4600. THE LOWER PORTION OF THE

09:37AM 9

MESSAGE, IT SHOULD BE UP ON THE SCREEN.

09:37AM 10

DO YOU SEE THAT?

09:37AM 11

A. I DO.

09:37AM 12

Q. AND THIS IS FROM MR. HAMILTON TO YOURSELF?

09:37AM 13

A. YES.

09:37AM 14

Q. AND THEN MR. HAMILTON WROTE, "NICE PRESENTATION TODAY. I

09:37AM 15

THINK IT DID GOOD, TRIPLE DUTY: PROVIDING A CLEAR EXAMPLE OF

09:37AM 16

CLIA'S APPLICATION TO A SPECIFIC TEST, EXEMPLIFYING HOW A

09:37AM 17

SURVEY PROCESS WOULD LOOK AT THINGS, AND THEN UPDATING ON

09:37AM 18

THERANOS."

09:37AM 19

DO YOU SEE THAT?

09:37AM 20

A. I DO.

09:37AM 21

Q. SO IT LOOKS LIKE THIS IS IN RELATION TO A PRESENTATION YOU

09:37AM 22

MADE RELATING TO THE THERANOS SURVEY?

09:37AM 23

A. RELATED TO PT INR.

09:37AM 24

Q. OKAY. AND THEN MR. HAMILTON WROTE, "IN YOUR OPINION, IS

09:38AM 25

THERE ANYTHING THAT THE RO OR WE COULD DO TO FREE UP ANY OF

09:38AM 1 GARY'S TIME."

09:38AM 2 JUST TO STOP THERE, R-O IS, IS THAT THE REGIONAL OFFICE?

09:38AM 3 A. YES.

09:38AM 4 Q. IS THAT MR. YAMAMOTO'S OFFICE WITHIN CMS?

09:38AM 5 A. YES.

09:38AM 6 Q. AND THEN "OF GARY'S TIME SO HE COULD EXPEDITE HIS PART OF

09:38AM 7 THE 2567?"

09:38AM 8 DO YOU SEE THAT?

09:38AM 9 A. I DO.

09:38AM 10 Q. AND SO BY THIS TIME, DECEMBER 8TH, 2015, THE SURVEY REPORT

09:38AM 11 HAD NOT BEEN COMPLETED; CORRECT?

09:38AM 12 A. CORRECT.

09:38AM 13 Q. AND FINAL DECISIONS HAD NOT YET BEEN MADE; CORRECT?

09:38AM 14 A. CORRECT.

09:38AM 15 Q. AND THEN MR. HAMILTON WROTE, "ESPECIALLY IF THE FINDING IS

09:38AM 16 IN IJ, THE TIME LAG BECOMES A LITTLE PROBLEMATIC."

09:38AM 17 DO YOU SEE THAT?

09:38AM 18 A. I DO.

09:38AM 19 Q. AND WHAT MR. HAMILTON IS GETTING AT, YOU WOULD AGREE, THAT

09:38AM 20 THE SURVEY STARTED IN SEPTEMBER OF 2015 AND IT'S NOW DECEMBER,

09:38AM 21 AND THE FINAL DETERMINATION OF IJ HAD NOT YET BEEN MADE; IS

09:38AM 22 THAT RIGHT?

09:38AM 23 A. IT HAD NOT BEEN MADE BECAUSE WE WERE STILL REVIEWING

09:38AM 24 DOCUMENTS.

09:39AM 25 Q. AND THEN IF WE FOCUS ON THE UPPER HALF OF THE MESSAGE, YOU

09:39AM 1 WROTE BACK TO MR. HAMILTON, "I CHECKED WITH GARY. WE ARE NOW  
09:39AM 2 IN THE PROCESS OF GOING THROUGH THE MANY DOCUMENTS COLLECTED ON  
09:39AM 3 THE SURVEY TO DETERMINE COMPLIANCE -- GIVEN THE VOLUME AND THE  
09:39AM 4 TECHNICAL NATURE OF THE DOCUMENTS, IT IS A TIME-CONSUMING  
09:39AM 5 PROCESS."

09:39AM 6 DO YOU SEE THAT?

09:39AM 7 A. YES.

09:39AM 8 Q. IS THAT ACCURATE?

09:39AM 9 A. IT IS ACCURATE.

09:39AM 10 Q. AND THEN YOU WROTE, "WE FEEL THAT THE EARLIEST WE CAN HAVE  
09:39AM 11 A 2567 READY IS JANUARY."

09:39AM 12 DO YOU SEE THAT?

09:39AM 13 A. YES.

09:39AM 14 Q. AND THEN YOU WROTE, "WE BOTH NEED TO WRITE OUR  
09:39AM 15 DEFICIENCIES THEN COME TOGETHER TO DISCUSS THE DEFICIENCIES AS  
09:39AM 16 WELL AS WHAT LEVEL OF NONCOMPLIANCE (NON-IJ VERSUS IJ) THE  
09:39AM 17 DEFICIENCIES RISE TO."

09:39AM 18 DO YOU SEE THAT?

09:39AM 19 A. I DO.

09:39AM 20 Q. AND IS THAT AN ACCURATE DESCRIPTION OF THE KIND OF  
09:39AM 21 DIVISION OF LABOR BETWEEN YOURSELF AND MR. YAMAMOTO? HE WROTE  
09:39AM 22 HIS PORTION, YOU WROTE YOURS, AND THEN YOU CAME TOGETHER AND  
09:39AM 23 DISCUSSED?

09:39AM 24 A. YES.

09:39AM 25 Q. OKAY. "OUR PLAN IS TO HAVE THE DISCUSSION THE WEEK OF

09:40AM 1 JANUARY 11TH SO THAT THE 2567 CAN BE RELEASED ASAP AFTER IT IS  
09:40AM 2 FINALIZED."

09:40AM 3 DO YOU SEE THAT?

09:40AM 4 A. I DO.

09:40AM 5 Q. OKAY. AND THEN AT THE BOTTOM PORTION OF THE MESSAGE YOU  
09:40AM 6 WROTE, "IT IS OUR UNDERSTANDING THAT THE FINGERSTICK TESTING  
09:40AM 7 HAS BEEN STOPPED; HOWEVER, THE VENIPUNCTURE TESTING CONTINUES."

09:40AM 8 DO YOU SEE THAT?

09:40AM 9 A. I DO.

09:40AM 10 Q. OKAY. YOU CAN SET THAT ASIDE.  
09:40AM 11 IF YOU COULD GO BACK TO THE 4621, THE SURVEY REPORT.  
09:40AM 12 AND IF YOU CAN LOOK AT PAGE 67. AND YOU CAN LOOK AT IT,  
09:40AM 13 MS. BENNETT, IN THE BINDER OR UP ON THE SCREEN.  
09:41AM 14 NOW, AT PAGE 67, AT ITEM 7, THIS IS RELATING TO D-TAG  
09:41AM 15 5793.  
09:41AM 16 DO YOU SEE THAT?

09:41AM 17 A. I DO.

09:41AM 18 Q. AND THEN ITEM 7 IN THE REPORT READS, "BASED ON LABORATORY  
09:41AM 19 PERSONNEL INTERVIEWS AND THE LABORATORY'S ALTERNATIVE  
09:41AM 20 ASSESSMENT PROGRAM RECORD REVIEW ON NOVEMBER 20, 2015, THE  
09:41AM 21 LABORATORY FAILED TO HAVE AN ANALYTIC SYSTEMS QUALITY  
09:41AM 22 ASSESSMENT MECHANISM THAT INCLUDED THE TIMELY REVIEW OF THE  
09:41AM 23 EFFECTIVENESS OF ACTIONS TAKEN."

09:41AM 24 DO YOU SEE THAT?

09:41AM 25 A. I DO.

09:41AM 1 Q. AND THEN THE NEXT PARAGRAPH THERE'S A DESCRIPTION, "TO  
09:41AM 2 COMPLY WITH THE CLIA REQUIREMENT," A CITATION TO THE  
09:41AM 3 REGULATION, "THE LABORATORY MAINTAINED A PROTOCOL TITLED  
09:41AM 4 PROFICIENCY FOR THERANOS LAB-DEVELOPED TESTS THAT INCLUDED A  
09:41AM 5 LABORATORY PROCESS CALLED AAP IN WHICH TESTS PERFORMED USING  
09:41AM 6 THE ADVIA 1800 WOULD BE EVALUATED AND DEFINED IN RELATIONSHIP  
09:41AM 7 TO THE ADVIA XPT."

09:42AM 8 DO YOU SEE THAT?

09:42AM 9 A. YES.

09:42AM 10 Q. AND THOSE ARE TWO COMMERCIAL DEVICES; CORRECT?

09:42AM 11 A. THEY ARE.

09:42AM 12 Q. AND THEN AT SUB B THERE'S A DESCRIPTION, "A REVIEW OF  
09:42AM 13 LABORATORY DOCUMENTS INDICATED THAT FOR THE FOLLOWING AAP  
09:42AM 14 EVENTS, THE LABORATORY'S EVALUATION WAS NOT TIMELY AND,  
09:42AM 15 THEREFORE, INEFFECTIVE."

09:42AM 16 DO YOU SEE THAT?

09:42AM 17 A. I DO, AND THIS IS MR. YAMAMOTO'S CITATION.

09:42AM 18 Q. I THINK YOU MENTIONED THAT BEFORE, YES, ON WEDNESDAY.

09:42AM 19 SO THIS IS RELATING TO THE MODIFIED PREDICATE FINGERSTICK  
09:42AM 20 TESTING?

09:42AM 21 A. I'M NOT SURE.

09:42AM 22 Q. OKAY. CONTINUING WITH THE REPORT THOUGH, AT THE NEXT  
09:42AM 23 ITEM, THE REPORT READS, "ON APRIL 1, 2014, THE LABORATORY  
09:42AM 24 COMPLETED TESTING FOR 18 ROUTINE CHEMISTRY ANALYTES."

09:42AM 25 DO YOU SEE THAT?

09:42AM 1 A. I DO.

09:42AM 2 Q. AND THEN ON THE NEXT PAGE IT CONTINUES, "THE LAB RECORDS

09:42AM 3 INDICATED THAT REVIEW OF THIS AAP WAS NOT COMPLETED UNTIL

09:43AM 4 NOVEMBER 16, 2015.

09:43AM 5 DO YOU SEE THAT?

09:43AM 6 A. YES.

09:43AM 7 Q. AND THAT'S THE ISSUE, THE REVIEW WAS NOT DONE TIMELY?

09:43AM 8 A. THIS IS MR. YAMAMOTO'S CITATION.

09:43AM 9 Q. BUT THE REPORT INDICATES THAT THE LAB DID NOT REVIEW THE

09:43AM 10 AAP RESULTS IN A TIMELY MANNER; IS THAT RIGHT?

09:43AM 11 A. IF THEY DON'T REVIEW THE INFORMATION IN A TIMELY MANNER,

09:43AM 12 THEN THE QUALITY ASSESSMENT PROGRAM IS REALLY NOT EFFECTIVE.

09:43AM 13 Q. AND THAT'S NECESSARY TO COMPLY WITH THE REGULATION;

09:43AM 14 CORRECT?

09:43AM 15 A. IT IS.

09:43AM 16 Q. OKAY. AND THEN THE NEXT PARAGRAPH READS, "ON MAY 15TH,

09:43AM 17 2014, THE LABORATORY COMPLETED TESTING FOR 14 ROUTINE CHEMISTRY

09:43AM 18 ANALYTES."

09:43AM 19 DO YOU SEE THAT?

09:43AM 20 A. I DO.

09:43AM 21 Q. AND THEN, AGAIN, THE RECORDS INDICATED THAT THE LAB

09:43AM 22 DIRECTOR OR MANAGEMENT DID NOT TIMELY REVIEW THE RESULTS.

09:44AM 23 DO YOU SEE THAT?

09:44AM 24 A. THAT'S WHAT THE CITATION SAYS.

09:44AM 25 Q. OKAY. AND THEN ON THE NEXT PARAGRAPH THE REPORT INDICATES

09:44AM 1 THAT "ON JULY 31, 2014, THE LABORATORY COMPLETED TESTING FOR  
09:44AM 2 18 ROUTINE CHEMISTRY ANALYTES."

09:44AM 3 DO YOU SEE THAT?

09:44AM 4 A. I DO.

09:44AM 5 Q. AND THEN THE RECORDS REVEAL THAT THE LABORATORY AND  
09:44AM 6 MANAGEMENT DID NOT REVIEW THEM IN A TIMELY MANNER; CORRECT?

09:44AM 7 A. YES.

09:44AM 8 Q. AND THEN ON THE SAME ISSUE FOR SUB IV, "ON NOVEMBER 20,  
09:44AM 9 2014, THE LABORATORY COMPLETED TESTING FOR 14 ROUTINE CHEMISTRY  
09:44AM 10 ANALYTES," AND AGAIN THE LAB DIRECTOR DIDN'T APPEAR TO HAVE  
09:44AM 11 REVIEWED IT IN A TIMELY MANNER; CORRECT?

09:44AM 12 A. IT SAYS THAT THE AAP WAS NOT COMPLETED UNTIL NOVEMBER 15TH  
09:45AM 13 BY THE APPROPRIATE LABORATORY PERSONNEL.

09:45AM 14 Q. CORRECT. THANK YOU.

09:45AM 15 NOW, IF WE CAN LEAVE THAT UP ON THE SCREEN, AND IF YOU CAN  
09:45AM 16 TAKE A LOOK WITHIN THE BINDER YOU HAVE AT TAB 20620, 20620.

09:45AM 17 A. IT'S IN A DIFFERENT BINDER.

09:45AM 18 THE COURT: IT'S IN THE BLACK BINDER, VOLUME 1.

09:45AM 19 THE WITNESS: RIGHT. YEAH.

09:45AM 20 BY MR. CAZARES:

09:45AM 21 Q. DO YOU HAVE 20620?

09:45AM 22 A. I DO.

09:45AM 23 Q. OKAY.

09:46AM 24 AND UP ON THE SCREEN, MR. ALLEN, IF YOU COULD TURN TO THE  
09:46AM 25 BOTTOM OF PAGE 67.

09:46AM 1 NOW, IN THE EXHIBIT THAT YOU HAVE IN FRONT OF YOU, 20627,  
09:46AM 2 THAT APPEARS TO BE AN ALTERNATIVE ASSESSMENT PROGRAM REPORT;  
09:46AM 3 CORRECT?

09:46AM 4 A. YES.

09:46AM 5 Q. AND YOU'LL SEE IN THE BOTTOM RIGHT-HAND CORNER THERE'S A  
09:46AM 6 LITTLE MARK, A STAMP THAT SAYS CMS 2 DASH AND THEN A PAGE  
09:46AM 7 NUMBER.

09:46AM 8 DO YOU SEE THAT?

09:46AM 9 A. 002886?

09:46AM 10 Q. YES.

09:46AM 11 A. YES.

09:46AM 12 Q. OKAY. AND THEN ON THIS FIRST PAGE OF 20620, THE TESTING  
09:46AM 13 DATE APPEARS TO BE 4-1-2014.

09:46AM 14 DO YOU SEE THAT?

09:46AM 15 A. I DO.

09:46AM 16 Q. AND THAT'S THE SAME AS WHAT IS REFLECTED IN THE SURVEY  
09:46AM 17 REPORT AT THE BOTTOM OF PAGE 67; CORRECT?

09:46AM 18 A. YES.

09:47AM 19 Q. OKAY. AND THEN AT THE BOTTOM OF PAGE 67, THE ITEM  
09:47AM 20 REFLECTED IN THE SURVEY REPORT IDENTIFIES COMPLETED TESTING FOR  
09:47AM 21 18 ROUTINE CHEMISTRY ANALYTES USING THE ADVIA 1800.

09:47AM 22 DO YOU SEE THAT?

09:47AM 23 A. I DO.

09:47AM 24 Q. AND THEN ON PAGES 1, 2, AND 3 OF 260, THESE ARE GENERAL  
09:47AM 25 CHEMISTRY ANALYTES; CORRECT?



09:47AM 1 A. YES.

09:47AM 2 Q. AND IF YOU COUNT THEM UP FROM PAGE 1 TO 3, THAT'S 18;

09:47AM 3 CORRECT?

09:47AM 4 A. YES.

09:47AM 5 Q. OKAY. AND CONTINUING ON THE SCREEN, MR. ALLEN, IF YOU

09:48AM 6 COULD TURN THE PAGE TO THE TOP OF PAGE 68, THE DATE IN THE

09:48AM 7 SURVEY REPORT INDICATES THAT THE REVIEW OF THE APRIL 1ST

09:48AM 8 CHALLENGE WAS NOVEMBER 16, 2015.

09:48AM 9 DO YOU SEE THAT ON THE SCREEN?

09:48AM 10 A. I DO.

09:48AM 11 Q. OKAY. AND THE DATE ON PAGE 3 OF EXHIBIT 262, THE

09:48AM 12 HANDWRITTEN DATES ARE 11-16-2015; CORRECT?

09:48AM 13 A. YES.

09:48AM 14 Q. OKAY. AND THEN IF YOU COULD TURN TO THE NEXT PAGE OF

09:48AM 15 20620, THE CHALLENGES HERE ARE DATED MAY 15TH, 2014; CORRECT?

09:48AM 16 A. YES.

09:48AM 17 Q. AND THE SAME AS SUB II ON PAGE 68 OF THE SURVEY REPORT?

09:48AM 18 A. YES.

09:48AM 19 Q. AND THE SURVEY REPORT SAYS "14 ROUTINE CHEMISTRY

09:48AM 20 ANALYTES."

09:48AM 21 DO YOU SEE THAT?

09:48AM 22 A. I DO.

09:48AM 23 Q. AND THEN ON PAGES 4 AND 5 OF 20620, THOSE ARE ROUTINE

09:48AM 24 CHEMISTRY ANALYTES; CORRECT?

09:49AM 25 A. YES.

09:49AM 1 Q. AND IT'S 14?

09:49AM 2 A. YES.

09:49AM 3 Q. OKAY. AND AGAIN, THE SIGNATURE DATE BY THE LAB MANAGEMENT

09:49AM 4 ON EXHIBIT 20620 SAYS ON MAY 15, 2014; CORRECT?

09:49AM 5 A. YES.

09:49AM 6 Q. SAME AS THE OF REPORT ON SUB II?

09:49AM 7 A. YES.

09:49AM 8 Q. AND IF YOU TOOK TO 20620, THE NEXT CHALLENGE IS 731, 2014.

09:49AM 9 DO YOU SEE THAT?

09:49AM 10 A. I DO.

09:49AM 11 Q. SAME AS SUB III IN THE SURVEY REPORT?

09:49AM 12 A. YES.

09:49AM 13 Q. AND THE SURVEY REPORT REFLECTS AGAIN 18 ROUTINE CHEMISTRY

09:49AM 14 ANALYTES IN THIS CHALLENGE; CORRECT?

09:49AM 15 A. YES.

09:49AM 16 Q. AND THE REVIEW DATE IN 20620, THE HANDWRITTEN DATE BY THE

09:49AM 17 LAB STAFF APPEARS TO BE 11-16-15?

09:49AM 18 A. YES.

09:49AM 19 Q. SAME AS IN THE SURVEY REPORT?

09:50AM 20 A. YES.

09:50AM 21 Q. OKAY. AND THEN THE LAST OF THE CHALLENGES REFLECTED HERE

09:50AM 22 IN 20620 IS DATED 11-20-2014.

09:50AM 23 DO YOU SEE THAT?

09:50AM 24 A. YES.

09:50AM 25 Q. AND SAME AS SUB IV IN THE SURVEY REPORT?

09:50AM 1

A. YES.

09:50AM 2

Q. AND 14 ROUTINE CHEMISTRY ANALYTES REFLECTED IN THE SURVEY

09:50AM 3

REPORT, ARE WE DEALING WITH THE SAME IN 20620?

09:50AM 4

A. YES.

09:50AM 5

Q. AND THE REVIEW FOR 20620 ON PAGE 10 IS 11-15-2015;

09:50AM 6

CORRECT?

09:50AM 7

A. YES.

09:50AM 8

Q. SAME AS THE WHAT IS REFLECTED IN SUB IV OF THE SURVEY

09:50AM 9

REPORT?

09:50AM 10

A. YES.

09:50AM 11

Q. AND SO WHAT WE'RE LOOKING AT APPEARS TO BE THE LAB RECORD

09:50AM 12

THAT IS CITED IN THE LAB REPORT HERE; CORRECT?

09:50AM 13

A. YES.

09:50AM 14

MR. CAZARES: MOVE TO ADMIT 20620, YOUR HONOR.

09:50AM 15

MR. LEACH: HEARSAY, YOUR HONOR.

09:50AM 16

THE COURT: ARE YOU OFFERING THIS FOR THE TRUTH?

09:50AM 17

MR. CAZARES: AS A BUSINESS RECORD, YOUR HONOR.

09:50AM 18

IT'S A BUSINESS RECORD. I CAN ASK MS. BENNETT --

09:50AM 19

THE COURT: LAY A FOUNDATION.

09:50AM 20

MR. CAZARES: I APOLOGIZE. YES.

09:51AM 21

Q. MS. BENNETT, IN THE COURSE OF THE SURVEY, YOU REQUESTED

09:51AM 22

MATERIALS OF THERANOS TO PERFORM THE SURVEY WORK; CORRECT?

09:51AM 23

A. YES.

09:51AM 24

Q. AND MR. YAMAMOTO DID THE SAME; CORRECT?

09:51AM 25

A. YES.

09:51AM 1 Q. AND IT'S THE PRACTICE AT CMS TO MAINTAIN THE RECORDS  
09:51AM 2 OBTAINED FROM LABORATORIES USED TO DOCUMENT THE SURVEY;  
09:51AM 3 CORRECT?

09:51AM 4 A. YES.

09:51AM 5 Q. OKAY.

09:51AM 6 MR. CAZARES: MOVE TO ADMIT 20620, YOUR HONOR.

09:51AM 7 MR. LEACH: OBJECTION.

09:51AM 8 THE COURT: I'M NOT SURE A FOUNDATION HAS BEEN MET.

09:51AM 9 MR. LEACH?

09:51AM 10 MR. LEACH: SAME OBJECTION.

09:51AM 11 THE COURT: I'M NOT SURE THIS WITNESS CAN LAY THE  
09:51AM 12 FOUNDATION.

09:51AM 13 BY MR. CAZARES:

09:51AM 14 Q. DO LABORATORIES HAVE REQUIREMENTS TO MAINTAIN THEIR OWN  
09:51AM 15 RECORDS SO THAT CMS HAS THE ABILITY TO REVIEW THOSE RECORDS?

09:51AM 16 A. YES.

09:51AM 17 Q. AND THAT'S A REQUIREMENT UNDER CLIA; CORRECT?

09:51AM 18 A. YES.

09:51AM 19 Q. AND WHEN YOU DO YOUR SURVEY REVIEW, YOU REQUEST THESE  
09:51AM 20 REQUIRED RECORDS OF THE LAB IN ORDER TO PERFORM YOUR OWN WORK;  
09:51AM 21 CORRECT?

09:51AM 22 A. I REQUEST THE RECORDS THAT I NEED TO PERFORM THE PART OF  
09:51AM 23 THE SURVEY THAT I'M RESPONSIBLE FOR.

09:51AM 24 Q. AND THE LAB IS REQUIRED TO MAINTAIN THOSE RECORDS;  
09:52AM 25 CORRECT?

09:52AM 1 A. THEY ARE.

09:52AM 2 Q. OKAY. IF THEY DON'T HAVE THE RECORDS, THAT'S A VIOLATION

09:52AM 3 AS WELL; CORRECT?

09:52AM 4 A. YES.

09:52AM 5 Q. AND, IN FACT, CMS HAS ITS OWN POLICIES TO MAINTAIN THE

09:52AM 6 RECORDS THAT IT OBTAINS IN THE SURVEYS BECAUSE CMS RELIES UPON

09:52AM 7 THOSE RECORDS TO PERFORM ITS OWN WORK; CORRECT?

09:52AM 8 A. WE HAVE A RECORD RETENTION REQUIREMENT, YES. I'M NOT SURE

09:52AM 9 IT'S POLICY. I THINK IT'S A LITTLE STRONGER THAN THAT.

09:52AM 10 Q. UNDERSTOOD.

09:52AM 11 AND WHEN YOU COMPLETE THE SURVEY REPORTS IDENTIFYING

09:52AM 12 NONCOMPLIANCE, THERE'S AN EFFORT TO ACCURATELY REFLECT THE

09:52AM 13 ITEMS IN THE LAB RECORDS THAT ARE IDENTIFIED IN THE SURVEY

09:52AM 14 REPORT; CORRECT?

09:52AM 15 A. YES.

09:52AM 16 MR. CAZARES: MOVE TO ADMIT 20260, YOUR HONOR.

09:52AM 17 MR. LEACH: SAME OBJECTION.

09:52AM 18 THE COURT: I NEVER HEARD HER SAY SHE HAS KNOWLEDGE

09:52AM 19 ABOUT THIS.

09:52AM 20 BY MR. CAZARES:

09:52AM 21 Q. THIS APPEARS TO BE THE ITEM, THE LAB RECORDS CITED IN THE

09:53AM 22 SURVEY REPORT; CORRECT?

09:53AM 23 A. THIS IS THE FIRST TIME THAT I'VE SEEN THE DOCUMENT, BUT,

09:53AM 24 YES, IT DOES.

09:53AM 25 Q. OKAY. AND YOU AND MR. YAMAMOTO, HE WROTE HIS PORTION OF

09:53AM 1 THE REPORT, AND YOU WROTE YOUR PORTION; CORRECT?

09:53AM 2 A. YES.

09:53AM 3 Q. AND YOU CAME TOGETHER TO DISCUSS THE ULTIMATE CONCLUSIONS  
09:53AM 4 THAT ARE REFLECTED IN THE SURVEY REPORT; CORRECT?

09:53AM 5 A. WE DID, BUT WE DIDN'T DISCUSS THE DOCUMENTS PARTICULARLY.

09:53AM 6 Q. HOWEVER, YOU MADE YOUR BEST EFFORTS TO ACCURATELY REFLECT  
09:53AM 7 THE DOCUMENTS THAT YOU RELIED UPON IN DRAFTING YOUR PORTION OF  
09:53AM 8 THE SURVEY REPORT; CORRECT?

09:53AM 9 A. I DID.

09:53AM 10 Q. AND YOU BELIEVE THAT MR. YAMAMOTO DID THE SAME; CORRECT?

09:53AM 11 A. YES.

09:53AM 12 Q. HE'S A KNOWLEDGEABLE, SKILLED SURVEYOR; CORRECT?

09:53AM 13 A. YES.

09:53AM 14 MR. CAZARES: MOVE TO ADMIT 20620, YOUR HONOR.

09:53AM 15 THE COURT: IS THERE TESTIMONY THAT THESE WERE GIVEN  
09:53AM 16 TO HER BY THE COMPANY?

09:53AM 17 MR. CAZARES: THIS WITNESS HAS BEEN INTRODUCED INTO  
09:53AM 18 THIS TRIAL TO TESTIFY ABOUT THE ENTIRETY OF THE 121 PAGE SURVEY  
09:54AM 19 REPORT THAT HAS BEEN ENTERED INTO EVIDENCE.

09:54AM 20 I ALSO THINK THAT THE LAB RECORD ITSELF IS EVIDENCE OF  
09:54AM 21 NOTICE TO CMS OF THE UNDERLYING EVENTS AND LAB POLICIES AND  
09:54AM 22 PRACTICES THAT CMS THEN RELIED UPON IN PERFORMING ITS WORK.

09:54AM 23 THE COURT: SO YOU WOULD LIKE IT INTRODUCED FOR  
09:54AM 24 NOTICE ONLY, AS OPPOSED TO FOR THE TRUTH OF THE MATTER  
09:54AM 25 ASSERTED?

09:54AM 1 MR. CAZARES: WELL, I'D LIKE IT FOR BOTH,  
09:54AM 2 YOUR HONOR, BUT I'LL TAKE NOTICE.

09:54AM 3 THE COURT: WELL, MY PROBLEM IS THAT I UNDERSTAND  
09:54AM 4 THAT THESE RECORDS ARE PART OF THE WORK THAT WAS DONE, BUT I  
09:54AM 5 HAVEN'T HEARD HER SAY THAT SHE -- SHE HAS TOLD US THIS IS THE  
09:54AM 6 FIRST TIME THAT SHE HAS SEEN THIS.

09:54AM 7 I DON'T KNOW THAT THIS WITNESS CAN SAY THAT THIS WAS PART  
09:54AM 8 OF -- GIVEN TO HER AS PART OF THE INVESTIGATION, AND THEN IT  
09:54AM 9 WAS THEN KEPT AS PART OF THE RECORD.

09:54AM 10 MR. CAZARES: BUT SHE'S DESCRIBED IT AS APPEARING TO  
09:54AM 11 BE THE DOCUMENT CITED IN THE REPORT GIVEN TO HER COLLEAGUE IN  
09:54AM 12 THE PERFORMANCE OF THE SAME SURVEY CONCURRENTLY WITH HER OWN  
09:54AM 13 WORK, AND THAT ITS THEIR PRACTICE TO REQUEST SUCH RECORDS,  
09:55AM 14 MAINTAIN SUCH RECORDS, RELY UPON SUCH RECORDS, AND IT'S CLEARLY  
09:55AM 15 THE DOCUMENT CITED IN THE SURVEY REPORT THAT IS ALREADY IN  
09:55AM 16 EVIDENCE.

09:55AM 17 THE COURT: I THINK YOU'RE CORRECT ON ALL OF THOSE.  
09:55AM 18 BUT WHETHER IT'S A BUSINESS RECORD IS WHAT I THINK THERE  
09:55AM 19 IS STILL A DEFICIT ON.

09:55AM 20 I'LL ADMIT IT FOR NOTICE, AND IT CAN BE, IT CAN BE  
09:55AM 21 PUBLISHED.

09:55AM 22 LADIES AND GENTLEMEN, THE DOCUMENT IS ADMITTED, NOT FOR  
09:55AM 23 THE TRUTH OF THE MATTER ASSERTED, BUT FOR NOTICE AS TO CMS AS  
09:55AM 24 THEY CONDUCTED THEIR INVESTIGATION.

09:55AM 25 YOU CAN INQUIRE ON THAT.

09:55AM 1 MR. CAZARES: THANK YOU, YOUR HONOR.

09:55AM 2 (DEFENDANT'S EXHIBIT 20620 WAS RECEIVED IN EVIDENCE.)

09:55AM 3 MR. CAZARES: IF YOU CAN PUT UP 20620 UP ON THE

09:55AM 4 SCREEN, AND TAKE DOWN THE SURVEY REPORT, MR. ALLEN.

09:55AM 5 Q. IF YOU LOOK AT THE PAGE 1 OF THE 20620 UP ON THE SCREEN,

09:55AM 6 DO YOU SEE IT'S ENTITLED ALTERNATIVE ASSESSMENT PROGRAM?

09:55AM 7 A. I DO.

09:55AM 8 Q. AND THIS IS THE AAP PROFICIENCY PROCEDURE AT THERANOS;

09:56AM 9 CORRECT?

09:56AM 10 A. YES.

09:56AM 11 Q. AND THE FIRST CHALLENGE IDENTIFIED ON PAGE 1 LOOKS TO BE

09:56AM 12 ALBUMIN; CORRECT?

09:56AM 13 A. YES.

09:56AM 14 Q. AND THAT'S A GENERAL CHEMISTRY ANALYTE?

09:56AM 15 A. YES.

09:56AM 16 Q. AND THIS APRIL 1ST, 2014 CHALLENGE IDENTIFIES FIVE

09:56AM 17 SAMPLES.

09:56AM 18 DO YOU SEE THAT?

09:56AM 19 A. YES.

09:56AM 20 Q. AND THEN THE TOTAL ALLOWABLE ERROR FOR THIS TEST IS PLUS

09:56AM 21 OR MINUS 10 PERCENT.

09:56AM 22 DO YOU SEE THAT?

09:56AM 23 A. I DO.

09:56AM 24 Q. AND THEN THE ROW BELOW TAE, THE DOCUMENT IDENTIFIES AS

09:56AM 25 COMPARING THE ANALYTE PREDICATE VALUE.



09:56AM 1 DO YOU SEE THAT?

09:56AM 2 A. I DO.

09:56AM 3 Q. AND THEN THERE ARE NUMBERS AND COMPARISONS FOR EACH OF THE  
09:56AM 4 SAMPLES.

09:56AM 5 SAMPLE 1, FOR EXAMPLE, ALBUMIN PREDICATE 4.5, ALBUMIN LDT  
09:56AM 6 4.8.

09:56AM 7 DO YOU SEE THAT?

09:56AM 8 A. YES.

09:56AM 9 Q. SO THE PREDICATE YOU'D UNDERSTAND TO BE A COMMERCIAL  
09:57AM 10 DEVICE; CORRECT?

09:57AM 11 A. YES.

09:57AM 12 Q. AND THEN THE LDT IS THERANOS'S OWN LAB DEVELOPED TEST FOR  
09:57AM 13 THIS ASSAY; CORRECT?

09:57AM 14 A. THAT'S WHAT I WOULD ASSUME, YES.

09:57AM 15 Q. OKAY. AND THEN THE NUMBERS ARE 4.5 VERSUS 4.8.

09:57AM 16 DO YOU SEE THAT?

09:57AM 17 A. I DO.

09:57AM 18 Q. AND IT'S WITHIN THE TOTAL ALLOWABLE ERROR.

09:57AM 19 DO YOU SEE THAT AS WELL?

09:57AM 20 A. I DO.

09:57AM 21 Q. AND THEN FOR EACH OF THE NEXT FOUR SAMPLES, AGAIN, THE  
09:57AM 22 NUMBERS FOR SAMPLE 2, 4.48 VERSUS 4.5 FOR THERANOS'S TEST.

09:57AM 23 DO YOU SEE THAT?

09:57AM 24 A. YES.

09:57AM 25 Q. AND FOR SAMPLE 3, 4.5 VERSUS 4.9 FOR THERANOS'S TEST.

09:57AM 1 DO YOU SEE THAT?

09:57AM 2 A. I DO.

09:57AM 3 Q. AND THEN FOR SAMPLE 5, AGAIN, 4.2 VERSUS 4.1 -- SORRY, FOR  
09:57AM 4 SAMPLE 4, 4.2 VERSUS 4.1.

09:57AM 5 DO YOU SEE THAT?

09:57AM 6 A. I DO.

09:57AM 7 Q. AND THEN FOR SAMPLE 5, IT'S 4.6 VERSUS 4.8.

09:57AM 8 DO YOU SEE THAT?

09:57AM 9 A. YES.

09:57AM 10 Q. AND ALL ARE WITHIN THE 10 PERCENT TOTAL ALLOWABLE ERROR?

09:57AM 11 A. YES.

09:57AM 12 Q. WHICH REFLECTS A PASS FOR THIS AAP?

09:58AM 13 A. YES.

09:58AM 14 Q. OKAY. BUT, AGAIN, THE FACT THAT IT PASSED WASN'T THE  
09:58AM 15 ISSUE FOR CMS.

09:58AM 16 THE ISSUE WAS APPARENTLY SOMEONE IN THE LAB DIDN'T REVIEW,  
09:58AM 17 OR THE LAB DIRECTOR DIDN'T REVIEW THESE RECORDS UNTIL NOVEMBER  
09:58AM 18 OF 2015, AT LEAST ACCORDING TO THE DOCUMENTATION THAT YOU SAW?

09:58AM 19 A. COULD I LOOK BACK TO THE -- I HAVE TO LOOK AT THE SURVEY  
09:58AM 20 REPORT BECAUSE IT'S NOT MY CITATION.

09:58AM 21 Q. OKAY. FAIR ENOUGH.

09:58AM 22 AND LOOKING AT THE NEXT ASSAY, SO IT'S ALKALINE  
09:58AM 23 PHOSPHATASE.

09:58AM 24 DO YOU SEE THAT?

09:58AM 25 A. I DO.

09:58AM 1 Q. AND THEN AGAIN WE HAVE FIVE SAMPLES.

09:58AM 2 DO YOU SEE THAT?

09:58AM 3 A. YES.

09:58AM 4 Q. AND FOR THIS TEST, THE TOTAL ALLOWABLE ERROR IS PLUS OR  
09:58AM 5 MINUS 30 PERCENT.

09:58AM 6 DO YOU SEE THAT?

09:58AM 7 A. I DO.

09:58AM 8 Q. AND SO IT'S DIFFERENT THAN THE ALBUMIN TOTAL ALLOWABLE  
09:58AM 9 ERROR.

09:58AM 10 DO YOU SEE THAT?

09:58AM 11 A. I DO.

09:58AM 12 Q. AND IS THAT SOMETHING THAT YOU'RE FAMILIAR WITH, DIFFERENT  
09:58AM 13 TESTS, DIFFERENT ASSAYS, DIFFERENT ANALYTES CAN HAVE DIFFERENT  
09:58AM 14 TOTAL ALLOWABLE ERRORS BASED ON THE LAB'S OWN WORK IN  
09:58AM 15 VALIDATION OR VERIFICATION OF SUCH TESTS?

09:59AM 16 A. DIFFERENT TESTS CAN HAVE DIFFERENT TOTAL ALLOWABLE ERRORS.  
09:59AM 17 IT'S DEPENDENT ON CERTAIN THINGS, EVEN THE TEST ITSELF.

09:59AM 18 Q. FAIR ENOUGH.

09:59AM 19 AND FOR THIS ONE IT'S 30 PERCENT, AT LEAST ACCORDING TO  
09:59AM 20 THERANOS; CORRECT?

09:59AM 21 A. YES.

09:59AM 22 Q. AND THEN FOR ALKALINE PHOSPHATASE FOR SAMPLES, THE FIVE  
09:59AM 23 SAMPLES, THE NUMBERS, SAMPLE 1, 48.2 VERSUS 50.

09:59AM 24 DO YOU SEE THAT?

09:59AM 25 A. YES.

09:59AM 1 Q. AND THEN FOR SAMPLE 2, 73.8 VERSUS 73.

09:59AM 2 DO YOU SEE THAT?

09:59AM 3 A. I DO.

09:59AM 4 Q. AND THEN FOR SAMPLE 3, THE PREDICATE HAD 49.2 AND THERANOS

09:59AM 5 HAD 52.

09:59AM 6 DO YOU SEE THAT?

09:59AM 7 A. I DO.

09:59AM 8 Q. AND THEN FOR SAMPLE 4, THE PREDICATE HAD 90.5 WHERE

09:59AM 9 THERANOS CAME UP WITH 95.

09:59AM 10 DO YOU SEE THAT?

09:59AM 11 A. I DO.

09:59AM 12 Q. AND THEN SAMPLE 5, 85.8 VERSUS 87.

09:59AM 13 DO YOU SEE THAT?

09:59AM 14 A. I DO.

09:59AM 15 Q. AND EACH WITHIN THE TOTAL ALLOWABLE ERROR?

10:00AM 16 A. THEY ARE, BUT IT'S ALSO WITHIN THE NARROW RANGE OF TEST

10:00AM 17 VALUES. IT DOESN'T CHALLENGE THE LOWER END OF THE REPORTABLE

10:00AM 18 RANGE OR THE UPPER END OF THE REPORTABLE RANGE.

10:00AM 19 Q. WELL, AT LEAST ACCORDING TO THIS REPORT, THOUGH, THE

10:00AM 20 RESULTS WERE WITHIN THE TOTAL ALLOWABLE ERROR; CORRECT?

10:00AM 21 A. THEY WERE FOR NORMAL PATIENTS.

10:00AM 22 Q. OKAY. IF WE GO FURTHER DOWN, MR. ALLEN. WE SEE, AGAIN,

10:00AM 23 THREE MORE ASSAYS HERE: ALANINE AMINOTRANSFERASE.

10:00AM 24 DO YOU SEE THAT?

10:00AM 25 A. I DO.

10:00AM 1 Q. AND THIS IS, AGAIN, APRIL 1ST OF 2014.

10:00AM 2 AND THEN THERE'S AN ASPARTATE AMINOTRANSFERASE.

10:00AM 3 DO YOU SEE THAT?

10:00AM 4 A. YES.

10:00AM 5 Q. AND BELOW THAT IS BICARBONATE?

10:00AM 6 A. YES.

10:00AM 7 Q. AND THEN FOR THE ALAMINE AMINOTRANSFERASE, THE TOTAL

10:01AM 8 ALLOWABLE ERROR IS 20 PERCENT.

10:01AM 9 DO YOU SEE THAT?

10:01AM 10 A. I DO.

10:01AM 11 Q. AND THE SAME FOR THE OTHER TWO?

10:01AM 12 A. YES.

10:01AM 13 Q. AND FOR EACH OF THESE THREE CHALLENGES, YOU'LL SEE THE

10:01AM 14 TOTAL ALLOWABLE ERRORS ARE MET FOR ALL OF THE SAMPLES SCORED;

10:01AM 15 CORRECT?

10:01AM 16 A. AGAIN, THEY'RE ALL NORMAL VALUES. THEY'RE NOT ABNORMAL

10:01AM 17 VALUES AT ALL.

10:01AM 18 Q. BUT ACCORDING TO THE CITATION HERE CITED BY MR. YAMAMOTO

10:01AM 19 WAS THAT THE LAB DIRECTOR DID NOT APPEAR TO REVIEW THE AAP

10:01AM 20 PROCEDURE TIMELY; CORRECT?

10:01AM 21 A. YES.

10:01AM 22 Q. OKAY. IF WE CAN GO TO THE BOTTOM OF THAT FIRST PAGE,

10:01AM 23 MR. ALLEN.

10:01AM 24 WE HAVE TWO MORE ASSAYS, CALCIUM AND CHOLESTEROL.

10:01AM 25 DO YOU SEE THAT?

10:01AM 1

A. I DO.

10:01AM 2

Q. AND THEN EACH OF THEM -- I GUESS FOR CALCIUM THERE'S A

10:01AM 3

TOTAL ALLOWABLE ERROR OF PLUS/MINUS 1.

10:01AM 4

DO YOU SEE THAT?

10:01AM 5

A. YES.

10:01AM 6

Q. AND THEN FOR CHOLESTEROL, THE TOTAL ALLOWABLE ERROR IS

10:02AM 7

PLUS/MINUS 10.

10:02AM 8

DO YOU SEE THAT?

10:02AM 9

A. I DO.

10:02AM 10

Q. AND THEN FOR EACH OF THE FIVE CHALLENGED SAMPLES, HERE

10:02AM 11

AGAIN THE LAB APPEARS TO HAVE PASSED; CORRECT?

10:02AM 12

MR. LEACH: OBJECTION, YOUR HONOR. CALLS FOR

10:02AM 13

HEARSAY.

10:02AM 14

MR. CAZARES: ACCORDING TO THE DOCUMENT.

10:02AM 15

THE COURT: IT SAYS WHAT IT SAYS.

10:02AM 16

MR. CAZARES: YEAH.

10:02AM 17

THE COURT: YOU CAN ANSWER THE QUESTION.

10:02AM 18

THE WITNESS: OKAY. YES, THEY CERTAINLY SEEM TO BE

10:02AM 19

100 PERCENT RIGHT AROUND 9.

10:02AM 20

MR. CAZARES: OKAY.

10:02AM 21

Q. OKAY. IF WE CAN SKIP NOW TO PAGE 4.

10:02AM 22

SO PAGE 4, THIS IS ANOTHER CHALLENGE ON MAY 15, 2014.

10:02AM 23

DO YOU SEE THAT?

10:02AM 24

A. I DO.

10:02AM 25

Q. AND HERE WE'RE LOOKING AT -- THE ASSAY IS AMYLASE,

10:02AM 1 BILIRUBIN, AND CREATINE KINASE.

10:02AM 2 DO YOU SEE THAT?

10:03AM 3 A. I DO.

10:03AM 4 Q. AND AGAIN, THESE ARE ALL GENERAL CHEMISTRY TESTS?

10:03AM 5 A. YES.

10:03AM 6 Q. AND THE TOTAL ALLOWABLE ERROR FOR AMYLASE IS 30 PERCENT

10:03AM 7 PLUS OR MINUS?

10:03AM 8 A. YES.

10:03AM 9 Q. AND THEN BILIRUBIN, 20 PERCENT PLUS OR MINUS?

10:03AM 10 A. YES.

10:03AM 11 Q. AND THE CREATINE, AGAIN, 30 PERCENT?

10:03AM 12 DO YOU SEE THAT?

10:03AM 13 A. YES.

10:03AM 14 Q. AND EACH OF THE FIVE CHALLENGES FOR EACH OF THOSE THREE

10:03AM 15 ASSAYS APPEARS TO HAVE FALLEN WITHIN THE TOTAL ALLOWABLE ERROR;

10:03AM 16 CORRECT?

10:03AM 17 A. IT DOES, YES.

10:03AM 18 Q. AND THIS IS AGAIN COMPARING THERANOS'S TEST VERSUS THE

10:03AM 19 PREDICATE COMMERCIAL DEVICE; CORRECT?

10:03AM 20 A. THAT WOULD HAVE BEEN WHAT MR. YAMAMOTO WAS COMPARING.

10:03AM 21 Q. OKAY. AND IF WE CAN TURN TO PAGE 6, MR. ALLEN. AND WE'LL

10:03AM 22 LOOK AT THE TOP OF THE PAGE.

10:03AM 23 THESE ARE CHALLENGES ON JULY 31ST, 2014.

10:03AM 24 DO YOU SEE THAT?

10:03AM 25 A. I DO.

10:03AM 1 Q. AND HERE AGAIN WE'RE DEALING WITH ALBUMIN, ALKALINE  
10:03AM 2 PHOSPHATASE, AND ALANINE AMINOTRANSFERASE.  
10:04AM 3 DO YOU SEE THAT?  
10:04AM 4 A. I DO.  
10:04AM 5 Q. AND THE TOTAL ALLOWABLE ERROR WAS PLUS 10 OR MINUS 10 FOR  
10:04AM 6 ALBUMIN.  
10:04AM 7 DO YOU SEE THAT?  
10:04AM 8 A. I DO.  
10:04AM 9 Q. AND THE OTHER TWO ASSAYS, 20 PERCENT AND 30 PERCENT PLUS  
10:04AM 10 OR MINUS.  
10:04AM 11 DO YOU SEE THAT?  
10:04AM 12 A. I DO.  
10:04AM 13 Q. AND THEN FOR EACH OF THESE THREE ASSAYS, FOR EACH OF THE  
10:04AM 14 FIVE SAMPLES, THE RESULTS APPEAR TO FALL WITHIN THE TOTAL  
10:04AM 15 ALLOWABLE ERROR; CORRECT?  
10:04AM 16 A. YES. BUT, AGAIN, THEY DID NOT CHALLENGE THEIR WHOLE  
10:04AM 17 REPORTABLE RANGE, WHICH WE WOULD EXPECT TO SEE.  
10:04AM 18 Q. BUT THAT'S NOT WHAT'S CITED BY MR. YAMAMOTO.  
10:04AM 19 A. I KNOW.  
10:04AM 20 Q. THE ISSUE MR. YAMAMOTO CITED HERE WAS THE LAB DIRECTOR  
10:04AM 21 APPEARS NOT TO HAVE REVIEWED THE RESULTS IN A TIMELY MANNER;  
10:04AM 22 CORRECT?  
10:04AM 23 A. YES, HE CITED THEM FOR TIMELY REVIEW.  
10:04AM 24 Q. OKAY. AND IF WE CAN GO TO PAGE 9, MR. ALLEN.  
10:05AM 25 ON PAGE 9, THESE ARE CHALLENGES ON NOVEMBER 20TH, 2014.



10:05AM 1 DO YOU SEE THAT?

10:05AM 2 A. I DO.

10:05AM 3 Q. AND THEN AGAIN HERE THE THREE ASSAYS ARE AMYLASE,  
10:05AM 4 BILIRUBIN, AND CREATINE AGAIN.

10:05AM 5 DO YOU SEE THAT?

10:05AM 6 A. I DO.

10:05AM 7 Q. AND THEN FOR EACH OF THE FIVE SAMPLES FOR EACH OF THE  
10:05AM 8 THREE ASSAYS, THE LAB APPEARS TO HAVE OBTAINED RESULTS WITHIN  
10:05AM 9 THE TOTAL ALLOWABLE ERROR; CORRECT?

10:05AM 10 A. THAT'S WHAT IT APPEARS.

10:05AM 11 Q. AND THAT'S COMPARING THE THERANOS TESTS TO THE COMMERCIAL  
10:05AM 12 DEVICE; CORRECT?

10:05AM 13 A. THE COMMERCIAL DEVICE VERSUS I BELIEVE THE FINGERSTICK  
10:05AM 14 LDT, NOT THE EDISON.

10:05AM 15 Q. OKAY. YOU CAN TAKE THAT DOWN, MR. ALLEN.

10:05AM 16 IF WE CAN TAKE A LOOK AT PAGE 31 OF EXHIBIT 4621, THE  
10:06AM 17 SURVEY REPORT.

10:06AM 18 ON PAGE 31 THERE'S A D-TAG 5429.

10:06AM 19 DO YOU SEE THAT?

10:06AM 20 A. I DO.

10:06AM 21 Q. AND THIS IS RELATING TO MAINTENANCE AND FUNCTION CHECKS.

10:06AM 22 DO YOU SEE THAT?

10:06AM 23 A. I DO.

10:06AM 24 Q. AND THEN THIS IS A STANDARD LEVEL NONCOMPLIANCE; CORRECT?

10:06AM 25 A. IT IS.

10:06AM 1 Q. AND THEN HERE THE ISSUE IS "FOR UNMODIFIED MANUFACTURER'S  
10:06AM 2 EQUIPMENT, INSTRUMENTS OR TEST SYSTEMS, THE LABORATORY MUST  
10:06AM 3 PERFORM AND DOCUMENT MAINTENANCE AS DEFINED BY THE MANUFACTURER  
10:06AM 4 AND WITH AT LEAST THE FREQUENCY SPECIFIED BY THE MANUFACTURER."

10:06AM 5 DO YOU SEE THAT?

10:06AM 6 A. I DO.

10:06AM 7 Q. OKAY. AND IS THIS MR. YAMAMOTO'S WORK OR YOURS?

10:07AM 8 A. IT'S MR. YAMAMOTO'S WORK.

10:07AM 9 Q. AND THEN THE REPORT READS, "THIS STANDARD IS NOT MET AS  
10:07AM 10 EVIDENCED BY:

10:07AM 11 "BASED ON TECHNICAL SUPERVISOR INTERVIEWS AND EVOLIS  
10:07AM 12 MAINTENANCE LOG RECORD REVIEW ON NOVEMBER 17TH, 2015, THE  
10:07AM 13 LABORATORY FAILED TO PERFORM WEEKLY EVOLIS MAINTENANCE AS  
10:07AM 14 DEFINED BY THE MANUFACTURER. FINDINGS INCLUDED:"

10:07AM 15 AND THEN IT DESCRIBES, "IN GENERAL IMMUNOLOGY, IT WAS THE  
10:07AM 16 PRACTICE OF THE LABORATORY TO TEST PATIENT ANA, HIV, AND  
10:07AM 17 QUANTIFERON USING THE BIORAD EVOLIS SYSTEM."

10:07AM 18 DO YOU SEE THAT?

10:07AM 19 A. YES.

10:07AM 20 Q. SO THESE ARE THREE TESTS, ANA, HIV, AND QUANTIFERON; IS  
10:07AM 21 THAT RIGHT?

10:07AM 22 A. YES.

10:07AM 23 Q. AND THEN THE BIORAD EVOLIS, THAT'S AN FDA APPROVED  
10:07AM 24 COMMERCIAL DEVICE; CORRECT?

10:07AM 25 A. I BELIEVE SO. I'M NOT FAMILIAR WITH IT.

10:08AM 1 Q. IF WE TAKE A LOOK AT PAGE 32, D-TAG 5437.

10:08AM 2 THIS IS CALIBRATION AND CALIBRATION VERIFICATION.

10:08AM 3 DO YOU SEE THAT?

10:08AM 4 A. I DO.

10:08AM 5 Q. AND THIS IS ALSO A STANDARD LEVEL NONCOMPLIANCE; CORRECT?

10:08AM 6 A. YES.

10:08AM 7 Q. AND THEN AT ITEM 1 AT THE BOTTOM OF PAGE 32, THE REPORT

10:08AM 8 READS, "BASED ON LABORATORY PERSONNEL INTERVIEWS AND COMPLETE

10:08AM 9 BLOOD COUNTS CALIBRATION DOCUMENTATION RECORD REVIEWS ON

10:08AM 10 SEPTEMBER 23RD, 2015, THE LABORATORY FAILED TO DOCUMENT ALL CBC

10:08AM 11 INSTRUMENT CALIBRATIONS PERFORMED USING THE DREW3 INSTRUMENTS."

10:08AM 12 DO YOU SEE THAT?

10:08AM 13 A. I DO.

10:08AM 14 Q. AND IS THIS MR. YAMAMOTO'S WORK OR YOURS?

10:08AM 15 A. IT'S MR. YAMAMOTO'S WORK.

10:08AM 16 Q. AND THAT'S BECAUSE THE DREW3 IS A COMMERCIAL DEVICE?

10:08AM 17 A. YES.

10:08AM 18 Q. AND NOT THERANOS EQUIPMENT?

10:08AM 19 A. IT'S A COMMERCIAL DEVICE.

10:08AM 20 Q. OKAY. CONTINUED AT SUB A, "IT WAS THE PRACTICE OF THE

10:09AM 21 LABORATORY TO TEST PATIENT CAPILLARY CBC SPECIMENS USING TWO

10:09AM 22 DREW3 INSTRUMENTS THE LABORATORY DESIGNATED AS DREW NUMBER 2

10:09AM 23 AND DREW NUMBER 3."

10:09AM 24 DO YOU SEE THAT?

10:09AM 25 A. YES, I DO.

10:09AM 1 Q. AND SO THE ISSUE HERE IS THE LABORATORY DOES NOT HAVE  
10:09AM 2 RECORDS OF THE MAINTENANCE THEY WERE REQUIRED TO DO; CORRECT?  
10:09AM 3 A. THEY FAILED TO DOCUMENT THE CALIBRATION.  
10:09AM 4 Q. FAIR ENOUGH. YOU DON'T HAVE ANY IDEA OR INFORMATION THAT  
10:09AM 5 MR. BALWANI WAS AWARE OF THIS PRIOR TO THE NONCOMPLIANCE OF THE  
10:09AM 6 SURVEY; IS THAT CORRECT?  
10:09AM 7 A. I DO NOT.  
10:09AM 8 Q. YOU HAVE NO EVIDENCE THAT MR. BALWANI WAS AWARE OF ANY OF  
10:09AM 9 THE NONCOMPLIANCE PRIOR TO THE BEGINNING OF THE SURVEY;  
10:10AM 10 CORRECT?  
10:10AM 11 A. TO SEPTEMBER.  
10:10AM 12 Q. SEPTEMBER OF 2015; CORRECT?  
10:10AM 13 A. YES.  
10:10AM 14 MR. CAZARES: YOUR HONOR, MAY I HAVE A MOMENT?  
10:10AM 15 THE COURT: YES.  
10:10AM 16 (DISCUSSION AMONGST DEFENSE COUNSEL OFF THE RECORD.)  
10:10AM 17 MR. CAZARES: NO FURTHER QUESTIONS.  
10:11AM 18 THE COURT: REDIRECT?  
10:11AM 19 MR. LEACH: YES, YOUR HONOR.  
10:11AM 20 THE COURT: FOLKS, YOU MAY STAND AND STRETCH YOUR  
10:11AM 21 LEGS FOR A MOMENT.  
10:11AM 22 (STRETCHING.)  
10:11AM 23 **REDIRECT EXAMINATION**  
10:11AM 24 BY MR. LEACH:  
10:11AM 25 Q. GOOD MORNING, MS. BENNETT. HOW ARE YOU?

10:11AM 1 A. I'M GOOD. HOW ARE YOU?

10:11AM 2 Q. I'M GOOD. THANK YOU.

10:11AM 3 I HAVE A FEW FOLLOW-UP QUESTIONS THAT I'D LIKE TO GO OVER  
10:11AM 4 WITH YOU.

10:11AM 5 FIRST I'D LIKE TO START WHERE MR. CAZARES ENDED. YOU WERE  
10:11AM 6 ASKED SOME QUESTIONS ABOUT MR. BALWANI'S KNOWLEDGE OF  
10:11AM 7 PARTICULAR CONDITIONS THAT YOU OBSERVED IN THE LAB.

10:11AM 8 DO YOU RECALL THOSE QUESTIONS?

10:11AM 9 A. I DO.

10:11AM 10 Q. IS THAT SOMETHING THAT YOU INSPECT FOR?

10:11AM 11 A. INSPECT?

10:11AM 12 Q. IS THAT SOMETHING THAT YOU LOOK FOR IN THE SURVEY, WHETHER  
10:12AM 13 THE COO KNOWS OF A PARTICULAR CONDITION?

10:12AM 14 A. NO.

10:12AM 15 Q. OKAY. DID YOU ASK FOR INTERNAL EMAILS OF THERANOS BETWEEN  
10:12AM 16 MS. HOLMES AND MR. BALWANI?

10:12AM 17 A. WE DID NOT.

10:12AM 18 Q. OKAY. DID YOU ASK FOR TEXT MESSAGES BETWEEN MS. HOLMES  
10:12AM 19 AND MR. BALWANI?

10:12AM 20 A. WE DID NOT.

10:12AM 21 Q. IS THAT SOMETHING THAT YOU ORDINARILY ASK FOR IN AN  
10:12AM 22 INSPECTION?

10:12AM 23 A. IT IS NOT.

10:12AM 24 Q. OKAY. AND DID YOU INTERVIEW ERIKA CHEUNG?

10:12AM 25 A. NO.

10:12AM 1 Q. DID YOU INTERVIEW DR. ADAM ROSENDORFF?

10:12AM 2 A. NO.

10:12AM 3 Q. DID YOU INTERVIEW DR. MARK PANDORI?

10:12AM 4 A. NO.

10:12AM 5 Q. AND THEY WERE WITH THE LAB AT THE TIME; IS THAT YOUR

10:12AM 6 UNDERSTANDING?

10:12AM 7 MR. CAZARES: OBJECTION. FOUNDATION.

10:12AM 8 BY MR. LEACH:

10:12AM 9 Q. WERE THEY IN THE --

10:12AM 10 THE COURT: YOU'RE ASKING A NEW QUESTION?

10:12AM 11 MR. LEACH: I'LL ASK A DIFFERENT QUESTION,

10:12AM 12 YOUR HONOR.

10:12AM 13 Q. AT ANY POINT IN TIME, DID YOU SEE MS. CHEUNG OR

10:12AM 14 DR. ROSENDORFF OR DR. PANDORI IN THE LAB WHILE YOU WERE DOING

10:12AM 15 YOUR INSPECTION?

10:12AM 16 A. NO.

10:12AM 17 Q. OKAY. YOU WERE ASKED SOME QUESTIONS ABOUT EXHIBIT 4533.

10:13AM 18 DO YOU HAVE THAT HANDY?

10:13AM 19 A. YES.

10:13AM 20 Q. AND THIS IS A LIST OF THE EDISON ASSAYS AND A TIME

10:13AM 21 PERIOD --

10:13AM 22 AND THIS IS IN EVIDENCE, MS. WACHS. WE CAN DISPLAY IT.

10:13AM 23 THIS IS THE LISTING OF THE 12 EDISON TESTS THAT WERE RUN

10:13AM 24 IN THE CLIA LAB?

10:13AM 25 A. YES.

10:13AM 1 Q. AND THIS IS SOMETHING THAT YOU HAD TO ASK FOR?

10:13AM 2 A. YES.

10:13AM 3 Q. AND MR. BALWANI WASN'T VOLUNTEERING THIS TO YOU IN YOUR  
10:13AM 4 INITIAL MEETING?

10:13AM 5 A. THAT'S CORRECT.

10:13AM 6 Q. OKAY. AND MR. CAZARES DREW YOUR ATTENTION TO THE LANGUAGE  
10:13AM 7 IN THE SECOND PARAGRAPH ABOUT THE CHANGES IN THE PLATFORMS NOT  
10:13AM 8 REFLECTING ON THE RELIABILITY OR ACCURACY OF ANY PLATFORM.

10:13AM 9 DO YOU SEE THAT LANGUAGE?

10:13AM 10 A. I DO.

10:13AM 11 Q. DID YOU BELIEVE THAT?

10:14AM 12 MR. CAZARES: OBJECTION. FOUNDATION.

10:14AM 13 THE COURT: DID SHE BELIEVE WHAT THE DOCUMENT SAYS?

10:14AM 14 BY MR. LEACH:

10:14AM 15 Q. YES. DID YOU BELIEVE THAT STATEMENT IN THE SECOND  
10:14AM 16 PARAGRAPH, THAT MR. BALWANI --

10:14AM 17 MR. CAZARES: AND RELEVANCE.

10:14AM 18 THE COURT: OVERRULED.

10:14AM 19 YOU CAN ANSWER THE QUESTION.

10:14AM 20 THE WITNESS: I DID NOT.

10:14AM 21 BY MR. LEACH:

10:14AM 22 Q. YOU WERE ALSO --

10:14AM 23 THANK YOU, MS. WACHS. WE CAN TAKE THAT DOWN.

10:14AM 24 YOU WERE ALSO ASKED SOME QUESTIONS ABOUT WHETHER YOU  
10:14AM 25 INTERVIEWED MR. BALWANI FORMALLY IN CONNECTION WITH THE

10:14AM 1 INSPECTION.

10:14AM 2 DO YOU RECALL THOSE QUESTIONS?

10:14AM 3 A. I DO.

10:14AM 4 Q. AND DO YOU NORMALLY INTERVIEW THE CHIEF OPERATING OFFICER?

10:14AM 5 A. NOT NORMALLY.

10:14AM 6 Q. OKAY. AND I BELIEVE YOU TESTIFIED THAT EACH DAY OF THE

10:14AM 7 INSPECTION YOU WOULD PROVIDE AN UPDATE TO MR. BALWANI ABOUT

10:14AM 8 WHAT CMS WAS FINDING; IS THAT CORRECT?

10:14AM 9 A. THAT'S CORRECT.

10:14AM 10 Q. SO IF YOU SAW SOMETHING THAT IS REPORTED IN THE 2567,

10:14AM 11 THAT'S SOMETHING THAT YOU WOULD BRING TO MR. BALWANI'S

10:14AM 12 ATTENTION EACH DAY OF THE SURVEY?

10:14AM 13 A. WE TOLD MR. BALWANI EVERY DAY WHAT DEFICIENCIES WE FOUND.

10:15AM 14 Q. YOU WERE ALSO ASKED SOME QUESTIONS ABOUT THE TIMELINESS OF

10:15AM 15 THE NOTIFICATIONS RELATING TO PT INR.

10:15AM 16 DO YOU RECALL SOME QUESTIONS ABOUT THAT?

10:15AM 17 A. I DO.

10:15AM 18 Q. AND I THINK YOU SAID THAT YOU WERE SURPRISED THAT THE LAB

10:15AM 19 WAS JUST GETTING AROUND TO NOTIFYING PATIENTS AT THE END OF

10:15AM 20 NOVEMBER.

10:15AM 21 A. YES.

10:15AM 22 Q. AND WHY WERE YOU SURPRISED?

10:15AM 23 A. I WAS SURPRISED BECAUSE WE HAD MADE THEM AWARE OF THE

10:15AM 24 ISSUES WITH PT INR IN SEPTEMBER, AND I WOULD HAVE EXPECTED THAT

10:15AM 25 THEY WOULD HAVE NOTIFIED THE AUTHORIZED PERSON, THE PERSON WHO



10:15AM 1 ORDERED THE TEST, AS SOON AS POSSIBLE SO THAT THE AUTHORIZED  
10:15AM 2 PERSON OR THE PHYSICIAN COULD HAVE USED THAT INFORMATION FOR  
10:15AM 3 PATIENT CARE.

10:15AM 4 Q. AND WHAT ABOUT THAT TIMELINESS? I GUESS WHY DID YOU THINK  
10:15AM 5 THAT?

10:15AM 6 MR. CAZARES: OBJECTION. FOUNDATION AND 702.

10:16AM 7 THE COURT: IF YOU COULD LAY A FOUNDATION FOR THAT  
10:16AM 8 QUESTION.

10:16AM 9 MR. LEACH: OKAY.

10:16AM 10 Q. WHY WERE YOU HIGHLIGHTING THE PT INR ISSUE TO MR. BALWANI?

10:16AM 11 A. PT INR IS A TEST THAT IS RELATED TO CLOTTING AND WHETHER A  
10:16AM 12 PERSON'S BLOOD CLOTS APPROPRIATELY, AND ON CERTAIN DRUGS IT HAS  
10:16AM 13 TO BE IN A THERAPEUTIC RANGE, AND IF IT'S NOT, THE PATIENT'S  
10:16AM 14 HEALTH CAN BE AFFECTED.

10:16AM 15 Q. AND WAS THAT KNOWLEDGE PART OF THE REASON WHY YOU WERE  
10:16AM 16 RAISING THIS AS A DEFICIENCY IN YOUR INSPECTION?

10:16AM 17 A. THAT'S PART OF IT.

10:16AM 18 Q. WHAT IS THE OTHER PART?

10:16AM 19 A. THE ISSUES WITH THE PT INR WERE, YOU KNOW, AS WE TALKED  
10:16AM 20 ABOUT THE REAGENT, THE FACT THAT THEY DIDN'T HAVE DOCUMENTATION  
10:17AM 21 TO SUPPORT HOW THEY CALCULATED THEIR INR, AND THE FACT THAT  
10:17AM 22 EVEN WHEN THE CONTROLS WERE OUT AND KEPT GOING DOWN, ALL THEY  
10:17AM 23 DID WAS CHANGE THE ACCEPTABLE RANGE OF THE CONTROL. THEY NEVER  
10:17AM 24 INVESTIGATED WHAT THE PROBLEM WITH THE CONTROLS WERE.

10:17AM 25 Q. THANK YOU.

10:17AM 1 YOU WERE ALSO SHOWN EXHIBIT 4600, WHICH WAS -- I THINK  
10:17AM 2 THIS WILL BE IN THE BLACK BINDER. THIS IS AN EMAIL FROM  
10:17AM 3 DECEMBER OF 2015.

10:17AM 4 DO YOU RECALL QUESTIONS ABOUT THAT?

10:17AM 5 A. I DO.

10:17AM 6 Q. AND YOU WROTE IN THAT EMAIL "FINGERSTICK TESTING HAS BEEN  
10:17AM 7 STOPPED."

10:17AM 8 WHAT DID YOU MEAN BY THAT?

10:17AM 9 A. THAT AT THAT POINT IT WAS MY UNDERSTANDING THAT THE  
10:17AM 10 TESTING THAT WAS USING THE FINGERSTICK SAMPLES HAD -- WAS NO  
10:17AM 11 LONGER BEING PERFORMED.

10:17AM 12 Q. HOW DID YOU COME TO HAVE THAT UNDERSTANDING?

10:17AM 13 A. OH. I DON'T RECALL.

10:18AM 14 Q. OKAY. YOU WERE ALSO ASKED QUESTIONS ABOUT THE DIFFERENCE  
10:18AM 15 BETWEEN A STANDARD LEVEL AND A CONDITION LEVEL DEFICIENCY.

10:18AM 16 DO YOU RECALL QUESTIONS ABOUT THAT?

10:18AM 17 A. I DO.

10:18AM 18 Q. AND HOW DO THE STANDARD LEVEL CONDITIONS RELATE TO  
10:18AM 19 CONDITIONS? DO THE STANDARD LEVEL CONDITIONS FEED INTO THE  
10:18AM 20 CONDITION LEVEL OBSERVATIONS?

10:18AM 21 A. YES. WHAT WE DO IS THAT WE LOOK AT ALL OF THE  
10:18AM 22 DEFICIENCIES THAT THE LABORATORY HAD IN SPECIFIC AREAS, AND IF  
10:18AM 23 IT'S SERIOUS ENOUGH, THEN THE STANDARDS WILL GET WRAPPED UP  
10:18AM 24 INTO THE CONDITION LEVEL, AND THE CONDITION LEVEL IS MORE  
10:18AM 25 SERIOUS THAN THE STANDARD LEVEL.

10:18AM 1 Q. AND AM I RIGHT NO SINGLE STANDARD LEVEL OBSERVATION

10:18AM 2 MEANS -- WELL, CAN YOU HAVE A CONDITION LEVEL OBSERVATION WITH

10:19AM 3 ONLY ONE STANDARD LEVEL OBSERVATION?

10:19AM 4 A. YOU CAN.

10:19AM 5 Q. AND CAN YOU HAVE A CONDITION LEVEL OBSERVATION IF THERE'S

10:19AM 6 MULTIPLE STANDARD LEVEL VIOLATIONS?

10:19AM 7 A. YOU CAN.

10:19AM 8 Q. OKAY. LET ME DRAW YOUR ATTENTION TO PAGE 7 OF

10:19AM 9 EXHIBIT 4621.

10:19AM 10 THIS IS IN EVIDENCE, MS. WACHS. YOU CAN DISPLAY THAT.

10:19AM 11 DO YOU SEE WHERE IT SAYS D5024 AND THEN HEMATOLOGY?

10:19AM 12 A. YES.

10:19AM 13 Q. AND THAT'S A D-TAG RELATING TO HEMATOLOGY?

10:19AM 14 A. IT'S THE CONDITION LEVEL D-TAG FOR HEMATOLOGY.

10:19AM 15 Q. OKAY. AND YOU WROTE, "THIS CONDITION HAS NOT BEEN MET AS

10:19AM 16 EVIDENCED BY," AND THEN YOU LIST YOUR OBSERVATIONS.

10:20AM 17 DO YOU SEE THAT?

10:20AM 18 A. YES.

10:20AM 19 Q. AND THEN WITHIN THE DESCRIPTION THERE ARE SOME D-TAGS IN

10:20AM 20 PARENTHESES, (SEE D5403), (SEE D5437) AND (SEE D5447) AND THERE

10:20AM 21 ARE ADDITION ONES.

10:20AM 22 DO YOU SEE THAT?

10:20AM 23 A. YES.

10:20AM 24 Q. ARE THOSE EXAMPLES OF HOW STANDARD LEVEL OBSERVATIONS CAN

10:20AM 25 FEED INTO A CONDITION LEVEL OBSERVATION?

10:20AM 1 A. YES. WHEN WE CITE A CONDITION, ANY OF THESE STANDARDS,  
10:20AM 2 INCLUDING THAT CONDITION, ARE LISTED IN THE CONDITION LEVEL  
10:20AM 3 CITATION.

10:20AM 4 Q. YOU WERE ASKED SOME QUESTIONS ABOUT SOME DOCUMENTS THAT  
10:20AM 5 THERANOS PROVIDED TO MR. YAMAMOTO RELATING TO PROFICIENCY  
10:21AM 6 TESTING RESULTS.

10:21AM 7 DO YOU RECALL THOSE QUESTIONS?

10:21AM 8 A. I DO.

10:21AM 9 Q. AND THOSE ARE FROM DOCUMENTS THAT THERANOS GAVE YOU;  
10:21AM 10 CORRECT?

10:21AM 11 A. YES.

10:21AM 12 Q. AND DID YOU -- DID CMS DO ANYTHING TO VERIFY OR  
10:21AM 13 CORROBORATE ANY OF THE NUMBERS IN THOSE ALTERNATIVE ASSESSMENT  
10:21AM 14 PROGRAM DOCUMENTS?

10:21AM 15 MR. CAZARES: OBJECTION. FOUNDATION RELATING TO HER  
10:21AM 16 TESTIMONY ABOUT HER ROLE.

10:21AM 17 THE COURT: IS THIS SPECIFIC TO HER, WHAT SHE DID?  
10:21AM 18 DID SHE DO THE INVESTIGATION TO CORROBORATE OR VERIFY?

10:21AM 19 MR. LEACH: HE ASKED A LOT OF QUESTIONS ABOUT WHAT  
10:21AM 20 MR. YAMAMOTO DID.

10:21AM 21 THE COURT: RIGHT.

10:21AM 22 MR. LEACH: I'M FOLLOWING UP ON THAT LINE OF  
10:21AM 23 QUESTIONING, YOUR HONOR.

10:21AM 24 I CAN FRAME IT IN TERMS OF INDIVIDUALS.

10:21AM 25 THE COURT: SURE. WHY DON'T YOU START WITH THAT?

10:21AM 1 BY MR. LEACH:

10:21AM 2 Q. OKAY. DID YOU DO ANYTHING TO VERIFY OR CORROBORATE THE  
10:22AM 3 NUMBERS THAT WERE PROVIDED TO CMS IN THE ALTERNATIVE ASSESSMENT  
10:22AM 4 PROGRAM DOCUMENT?

10:22AM 5 A. NOT RELATED TO THE ROUTINE CHEMISTRIES.

10:22AM 6 Q. OKAY. TO YOUR KNOWLEDGE DID MR. YAMAMOTO DO ANY OF THAT?

10:22AM 7 A. I DON'T KNOW.

10:22AM 8 MR. CAZARES: OBJECTION. FOUNDATION.

10:22AM 9 THE COURT: OVERRULED.

10:22AM 10 THE WITNESS: I DO NOT.

10:22AM 11 BY MR. LEACH:

10:22AM 12 Q. OKAY. DID CMS, TO YOUR KNOWLEDGE, DO ANYTHING TO ASSESS  
10:22AM 13 OR DO ANYTHING WITH RESPECT TO THE TOTAL ALLOWABLE ERROR THAT  
10:22AM 14 IS INCLUDED IN THE PROFICIENCY TESTING RESULTS?

10:22AM 15 MR. CAZARES: OBJECTION. FOUNDATION.

10:22AM 16 THE COURT: CAN YOU LAY A FOUNDATION AS TO WHETHER  
10:22AM 17 OR NOT THAT'S PART OF HER -- THE INVESTIGATION AND THE SCOPE OF  
10:22AM 18 THE INVESTIGATION.

10:22AM 19 MR. LEACH: SURE.

10:23AM 20 Q. TO YOUR KNOWLEDGE, MS. BENNETT, IS IT WITHIN THE SCOPE OF  
10:23AM 21 CMS'S INVESTIGATION TO ASSESS THE TOTAL ALLOWABLE ERROR THAT  
10:23AM 22 THE LAB IS USING IN ITS PROFICIENCY TESTING?

10:23AM 23 A. WHAT WE DO IS WE LOOK AT WHAT THE LAB ALLOWS FOR THE TOTAL  
10:23AM 24 ALLOWABLE ERROR, AND THEN WE ASSESS WHETHER THEY'RE  
10:23AM 25 COMPLIANT -- WHETHER THEY'RE DEFICIENT WITH THEIR REQUIREMENTS

10:23AM 1 FOR TOTAL ALLOWABLE ERROR.

10:23AM 2 Q. SO THE LAB SETS THE TOTAL ALLOWABLE ERROR?

10:23AM 3 A. YES.

10:23AM 4 Q. AND YOU DON'T COMPARE THAT TO SOMEBODY ELSE'S TOTAL

10:23AM 5 ALLOWABLE ERROR?

10:23AM 6 A. WE DO NOT.

10:23AM 7 Q. OKAY. AND WITH RESPECT TO EXHIBIT -- I WANT TO DRAW YOUR

10:23AM 8 ATTENTION TO EXHIBIT 20620.

10:24AM 9 DO YOU RECALL BEING ASKED SOME QUESTIONS ABOUT THIS?

10:24AM 10 A. I DO.

10:24AM 11 Q. AND AGAIN, THIS ISN'T A DOCUMENT THAT YOU WERE PROVIDED AS

10:24AM 12 PART OF YOUR WORK?

10:24AM 13 A. THIS WAS PROVIDED TO MR. YAMAMOTO, NOT TO ME.

10:24AM 14 Q. OKAY. AND YOU HAVE NO KNOWLEDGE ABOUT HOW THESE NUMBERS

10:24AM 15 WERE DERIVED AT?

10:24AM 16 A. I DO NOT.

10:24AM 17 Q. YOU HAVE NO KNOWLEDGE ABOUT WHEN THEY WERE DERIVED?

10:24AM 18 A. I DO NOT.

10:24AM 19 Q. YOU HAVE NO KNOWLEDGE ABOUT WHETHER ANY OF THE NUMBERS IN

10:24AM 20 THERE WERE CHANGED OR MODIFIED OVER THE COURSE OF TIME?

10:24AM 21 A. I DO NOT.

10:24AM 22 Q. OKAY.

10:24AM 23 MAY I APPROACH, YOUR HONOR?

10:24AM 24 THE COURT: YES.

10:24AM 25 MR. LEACH: (HANDING.)

10:25AM 1 YOUR HONOR, MAY I HAND THE DOCUMENTS UP TO THE COURT?

10:25AM 2 THE COURT: YES. DOES THE DEFENSE HAVE THEM?

10:25AM 3 MR. LEACH: I'M ABOUT TO GIVE THEM TO THEM.

10:25AM 4 (HANDING.)

10:25AM 5 Q. I'VE PLACED BEFORE YOU, MS. BENNETT, WHAT WE'VE MARKED AS  
10:25AM 6 EXHIBIT 5834.

10:25AM 7 DO YOU SEE THAT NUMBER DOWN AT THE BOTTOM?

10:25AM 8 A. I DO.

10:25AM 9 Q. AND DOES THIS APPEAR TO BE AN EMAIL FROM SURAJ SAKSENA TO  
10:25AM 10 DANIEL YOUNG AND LANGLEY GEE DATED MAY 29TH, 2015?

10:25AM 11 A. IT DOES.

10:25AM 12 Q. OKAY. AND YOU MET MR. SAKSENA, OR DR. SAKSENA, DURING THE  
10:25AM 13 INSPECTION?

10:25AM 14 A. YES.

10:25AM 15 Q. AND YOU ALSO REVIEWED SOME DOCUMENTS EXECUTED BY  
10:26AM 16 DR. SAKSENA IN THE COURSE OF YOUR WORK?

10:26AM 17 OR DID YOU HAVE INTERACTIONS WITH DR. SAKSENA DURING THE  
10:26AM 18 INSPECTION?

10:26AM 19 A. YES.

10:26AM 20 Q. AND DID DR. SAKSENA PROVIDE INFORMATION TO YOU FROM TIME  
10:26AM 21 TO TIME?

10:26AM 22 A. YES.

10:26AM 23 Q. I ALSO DRAW YOUR ATTENTION TO PAGE 21 OF THIS DOCUMENT.

10:26AM 24 DO YOU SEE THAT THERE IS SOME METADATA LISTED ABOUT SOME  
10:26AM 25 OF THE BATES NUMBERS AND THE CUSTODIAN FOR THIS DOCUMENT?

10:26AM 1

A. YES.

10:26AM 2

Q. AND DO YOU SEE SOME NAMES LISTED IN THE CUSTODIAN ROW

10:26AM 3

ASSOCIATED WITH THIS PARTICULAR DOCUMENT?

10:26AM 4

A. I DO.

10:26AM 5

Q. AND DO YOU SEE THAT THE SUBJECT OF THIS EMAIL IS AAP

10:26AM 6

REPORT?

10:26AM 7

DO YOU SEE THAT?

10:26AM 8

A. I DO.

10:27AM 9

Q. OKAY.

10:27AM 10

YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 5384.

10:27AM 11

MR. CAZARES: OBJECTION. HEARSAY AND FOUNDATION.

10:27AM 12

MR. LEACH: YOUR HONOR, I THINK THE BUSINESS RECORDS

10:27AM 13

FOUNDATION HAS BEEN LAID THROUGH OTHER WITNESSES, AND AT A

10:27AM 14

MINIMUM I OFFER THIS AS NOTICE TO THE DEFENDANT.

10:27AM 15

THE COURT: WELL, THIS IS A SIMILAR -- THANK YOU.

10:27AM 16

THIS IS A SIMILAR EMAIL AS THE OTHER DOCUMENT, THE 20620.

10:27AM 17

I DON'T THINK THIS WITNESS CAN LAY A PROPER BUSINESS FOUNDATION

10:27AM 18

UNDER 803(6).

10:27AM 19

I WILL ADMIT IT NOT FOR THE TRUTH OF THE MATTER ASSERTED,

10:27AM 20

LADIES AND GENTLEMEN, BUT PURELY FOR ANY NOTICE, NOTICE ISSUES.

10:27AM 21

MR. CAZARES: AND JUST FOR THE RECORD, YOUR HONOR,

10:27AM 22

WE OBJECT TO THE NOTICE ADMISSION BECAUSE MR. BALWANI IS NOT

10:27AM 23

REFLECTED IN THE EMAIL EXCHANGE AT ALL.

10:27AM 24

THE COURT: WELL, THIS IS NOTICE AS TO THIS WITNESS.

10:27AM 25

IS THAT WHO IT'S GOING FOR?



10:27AM 1 MR. CAZARES: IT'S ALSO NOT REFLECTED --

10:27AM 2 MR. LEACH: IT'S NOTICE TO MR. BALWANI, YOUR HONOR,

10:27AM 3 AND I'M DRAWING YOUR ATTENTION TO THE BOX FOR THE CUSTODIAN.

10:28AM 4 IT APPEARS THAT MR. BALWANI DID HAVE POSSESSION OF THIS

10:28AM 5 DOCUMENT, SO IT WOULD BE OFFERED FOR NOTICE TO HIM.

10:28AM 6 THE COURT: WELL, I'M NOT SURE THAT THE -- THE EMAIL

10:28AM 7 IS CERTAINLY NOT ADDRESSED TO HIM. THIS IS A METADATA BOX, AS

10:28AM 8 YOU SAID, AND WITHOUT FOUNDATION AS TO THIS WITNESS'S KNOWLEDGE

10:28AM 9 OF THE METADATA AND WHAT THIS MEANS, I DON'T THINK IT SHOWS,

10:28AM 10 THAT BOX SHOWS NOTICE DIRECTLY WITHOUT SOME FURTHER FOUNDATION.

10:28AM 11 MR. LEACH: OKAY, YOUR HONOR.

10:28AM 12 Q. MS. BENNETT, YOU -- WITH RESPECT TO EXHIBIT 20620, AM I

10:28AM 13 RIGHT, YOU HAVE NO IDEA WHERE THAT DATA COMES FROM; CORRECT?

10:28AM 14 A. I DO NOT.

10:28AM 15 Q. AND YOU DON'T KNOW WHEN IT WAS PREPARED?

10:28AM 16 A. I DO NOT.

10:28AM 17 Q. AND YOU DON'T KNOW HOW IT WAS PREPARED?

10:29AM 18 A. I DO NOT.

10:29AM 19 Q. AND YOU DON'T KNOW WHETHER CERTAIN CHALLENGES ON CERTAIN

10:29AM 20 EVENTS --

10:29AM 21 MR. CAZARES: OBJECTION.

10:29AM 22 THE COURT: OVERRULED.

10:29AM 23 BY MR. LEACH:

10:29AM 24 Q. YOU DON'T KNOW WHETHER ANY OF THE CHALLENGES WERE CHANGED

10:29AM 25 FROM PASS TO FAIL PRIOR TO CMS BEING PROVIDED THAT DOCUMENT?

10:29AM 1 MR. CAZARES: OBJECTION. FOUNDATION. 403.

10:29AM 2 THE COURT: IS THE QUESTION SHE HAS NO IDEA ABOUT  
10:29AM 3 KNOWLEDGE OF HOW THAT WAS CREATED, ALTERED IN ANY WAY?

10:29AM 4 MR. LEACH: CORRECT.

10:29AM 5 THE COURT: OKAY. WHY DON'T YOU ASK THAT QUESTION?  
10:29AM 6 BY MR. LEACH:

10:29AM 7 Q. OKAY. YOU HAVE NO KNOWLEDGE ABOUT WHETHER ANY OF THE  
10:29AM 8 NUMBERS IN 20620, OR THE 100 PERCENT PASS/FAIL, WHETHER ANY OF  
10:29AM 9 THAT CHANGED PRIOR TO THE DOCUMENT BEING PROVIDED TO CMS? YOU  
10:29AM 10 HAVE NO KNOWLEDGE OF THAT?

10:29AM 11 MR. CAZARES: OBJECTION. FOUNDATION. 403.

10:29AM 12 THE COURT: OVERRULED.

10:29AM 13 YOU CAN ANSWER THE QUESTION.

10:29AM 14 THE WITNESS: I DO NOT.

10:29AM 15 BY MR. LEACH:

10:29AM 16 Q. YOU WERE ALSO ASKED A NUMBER OF QUESTIONS ABOUT WHETHER  
10:29AM 17 THE 2567 IDENTIFIES ANY ACTUAL PATIENT HARM.

10:30AM 18 DO YOU RECALL THOSE QUESTIONS?

10:30AM 19 A. I DO.

10:30AM 20 Q. AND DO YOU RECALL BEING ASKED, IN YOUR FINDINGS YOU DIDN'T  
10:30AM 21 IDENTIFY ANY EVIDENCE THAT SUGGESTS PATIENTS WERE ACTUALLY  
10:30AM 22 AFFECTED BY THE NONCOMPLIANCE YOU IDENTIFIED.

10:30AM 23 DO YOU RECALL BEING ASKED A NUMBER OF QUESTIONS ALONG  
10:30AM 24 THOSE LINES?

10:30AM 25 A. I DO.

10:30AM 1 Q. AND YOU WERE ASKED WHETHER CMS DID ANY TYPE OF PATIENT  
10:30AM 2 IMPACT ASSESSMENTS.

10:30AM 3 DO YOU RECALL QUESTIONS ALONG THOSE LINES?

10:30AM 4 A. I DO.

10:30AM 5 Q. AND IS THAT SOMETHING THAT YOU WOULD EXPECT THE LABORATORY  
10:30AM 6 TO DO?

10:30AM 7 A. WE DO.

10:30AM 8 Q. WHY DO YOU EXPECT THAT?

10:30AM 9 A. WE EXPECT THE LABORATORIES TO LOOK AT ANY PATIENT THAT HAS  
10:30AM 10 BEEN OR HAS POTENTIALLY BEEN AFFECTED BY A DEFICIENT PRACTICE  
10:30AM 11 THAT THE LABORATORY DOES. IT'S THEIR RESPONSIBILITY TO MAKE  
10:30AM 12 SURE THAT PATIENTS WERE NOT AFFECTED OR HAD THE POTENTIAL TO BE  
10:30AM 13 AFFECTED WHEN THEY HAD DEFICIENCIES THAT -- DEFICIENCIES IN  
10:31AM 14 WHAT THEY WERE SUPPOSED TO BE DOING TO ENSURE ACCURATE AND  
10:31AM 15 RELIABLE TESTING.

10:31AM 16 Q. AND THAT'S SOMETHING THAT YOU WOULD EXPECT THE LABORATORY  
10:31AM 17 TO DO; CORRECT?

10:31AM 18 A. YES.

10:31AM 19 Q. OKAY.

10:31AM 20 MAY I APPROACH, YOUR HONOR?

10:31AM 21 THE COURT: YES.

10:31AM 22 MR. LEACH: (HANDING.)

10:32AM 23 Q. MS. BENNETT, I'VE PLACED BEFORE YOU EXHIBIT 4943.

10:32AM 24 DO YOU HAVE THAT IN FRONT OF YOU?

10:32AM 25 A. I DO.

10:32AM 1 Q. AND DO YOU SEE THAT THERE'S A CMS BATES LABEL TO THE  
10:32AM 2 RIGHT?

10:32AM 3 A. YES.

10:32AM 4 Q. AND DO YOU SEE ON THE FIRST PAGE THERE'S A TABLE OF  
10:32AM 5 CONTENTS WITH A TABLE OF BINDER LETTERS AND A SUMMARY?

10:32AM 6 A. I DO.

10:32AM 7 Q. OKAY. IS THIS SOMETHING THAT THERANOS PROVIDED TO YOU IN  
10:32AM 8 THE COURSE OF CMS'S INSPECTION?

10:32AM 9 A. THIS APPEARS TO BE PART OF THEIR RESPONSE TO US, TO THE  
10:32AM 10 SURVEY.

10:32AM 11 Q. OKAY. LET ME DRAW YOUR ATTENTION TO PAGE 9 OF THE  
10:33AM 12 EXHIBIT.

10:33AM 13 DO YOU SEE A HEADING AT THE TOP RELATING TO A TPS 3.5?

10:33AM 14 A. YES.

10:33AM 15 Q. AND THAT'S A REFERENCE TO THE EDISON DEVICE?

10:33AM 16 A. YES.

10:33AM 17 Q. AND THIS IS A DOCUMENT THAT THERANOS PROVIDED TO YOU?

10:33AM 18 A. YES.

10:33AM 19 Q. AND DO YOU SEE A PARAGRAPH, THE FOURTH FULL PARAGRAPH  
10:33AM 20 UNDER THE HEADING PATIENT IMPACT?

10:33AM 21 DO YOU SEE THAT PARAGRAPH?

10:33AM 22 A. I DO.

10:33AM 23 Q. AND DO YOU SEE THAT THERE IS ALSO -- AND DOES THIS RELATE  
10:33AM 24 TO WHAT THE COMPANY WAS TELLING YOU ABOUT POTENTIAL IMPACT TO  
10:33AM 25 PATIENTS FOR DEFICIENCIES IDENTIFIED DURING YOUR SURVEY?

10:33AM 1 A. YES.

10:33AM 2 Q. AND DO YOU SEE THAT THERE'S A PARAGRAPH DOWN AT THE BOTTOM

10:33AM 3 WITH SOME ADDITIONAL INFORMATION ABOUT WHAT THERANOS IS DOING?

10:33AM 4 A. UNDER CORRECTIVE ACTION?

10:34AM 5 Q. YES.

10:34AM 6 A. YES.

10:34AM 7 MR. LEACH: YOUR HONOR, THE GOVERNMENT OFFERS

10:34AM 8 EXHIBIT 4943.

10:34AM 9 MR. CAZARES: OBJECTION. FOUNDATION. HEARSAY.

10:34AM 10 403.

10:34AM 11 THE COURT: GO AHEAD, MR. LEACH.

10:34AM 12 MR. LEACH: HE OPENED THE DOOR TO THIS, YOUR HONOR,

10:34AM 13 BY ASKING, YOU KNOW, DOES CMS IDENTIFY PATIENT IMPACT IN THE

10:34AM 14 2567.

10:34AM 15 MR. CAZARES: IT'S STILL HEARSAY, AND THIS ITEM IS

10:34AM 16 NOT IDENTIFIED IN THE SURVEY REPORT AT 4621, WHICH IS IN

10:34AM 17 EVIDENCE.

10:34AM 18 THE COURT: WELL, WHY DON'T YOU LAY SOME ADDITIONAL

10:34AM 19 FOUNDATION AS TO WHAT THIS INFORMATION IS AND WHETHER SHE HAS

10:34AM 20 KNOWLEDGE OF IT?

10:34AM 21 BY MR. LEACH:

10:34AM 22 Q. DO YOU HAVE KNOWLEDGE OF THIS DOCUMENT, MS. BENNETT?

10:34AM 23 A. YES.

10:34AM 24 Q. AND IS THIS SOMETHING THAT THERANOS PROVIDED TO YOU?

10:34AM 25 A. YES.

10:34AM 1 Q. AND IS THIS SOMETHING THAT THERANOS PROVIDED TO YOU IN  
10:34AM 2 RELATION TO A DETERMINATION OF WHETHER THERE WAS OR WASN'T AN  
10:34AM 3 IMPACT TO PATIENTS?  
10:34AM 4 A. YES.  
10:34AM 5 Q. AND DID YOU RELY ON THIS IN THE COURSE OF YOUR WORK IN  
10:35AM 6 EVALUATING THERANOS'S RESPONSE TO THE 2567?  
10:35AM 7 A. YES.  
10:35AM 8 Q. AND WHEN YOU'RE PREPARING A 2567 AND LISTING PARTICULAR  
10:35AM 9 OBSERVATIONS, YOU EXPECT THE LAB TO RESPOND TO THOSE; CORRECT?  
10:35AM 10 A. YES.  
10:35AM 11 Q. AND IS THIS PART OF YOUR WORK IN EVALUATING WHETHER OR NOT  
10:35AM 12 THE COMPANY HAS RESPONDED TO OR NOT RESPONDED TO THE  
10:35AM 13 DEFICIENCIES?  
10:35AM 14 A. YES.  
10:35AM 15 Q. AND THIS WAS PROVIDED TO YOU AT SOME POINT IN EARLY 2016?  
10:35AM 16 A. I BELIEVE SO.  
10:35AM 17 Q. OKAY.  
10:35AM 18 YOUR HONOR, THE GOVERNMENT OFFERS EXHIBIT 4943.  
10:35AM 19 MR. CAZARES: OBJECTION. I APOLOGIZE.  
10:35AM 20 OBJECTION. FOUNDATION. HEARSAY.  
10:35AM 21 THERE'S ALSO A RELEVANCE ISSUE DUE TO THE TIMING OF THE  
10:35AM 22 ITEM AND THE AUTHOR OF THE ITEM THAT IS REFLECTED IN THIS  
10:36AM 23 EXHIBIT.  
10:36AM 24 THE COURT: FIRST OF ALL, MR. LEACH, ARE YOU ASKING  
10:36AM 25 FOR THE ENTIRETY OF THIS DOCUMENT, OR JUST THIS PAGE THAT

10:36AM 1 YOU'RE REFERENCING?

10:36AM 2 MR. LEACH: JUST PAGE 1 AND PAGE 9, YOUR HONOR.

10:36AM 3 THE COURT: PAGE 1 IS THE TABLE OF CONTENTS?

10:36AM 4 MR. LEACH: YES.

10:36AM 5 THE COURT: AND CAN YOU TIME STAMP THIS PAGE 9?

10:36AM 6 MR. LEACH: YES, YOUR HONOR.

10:36AM 7 Q. MS. BENNETT, LET ME DRAW YOUR ATTENTION TO PAGE 1 OF THE

10:36AM 8 DOCUMENT.

10:36AM 9 DO YOU SEE SOME BINDER LETTERS IN THE LEFT COLUMN?

10:37AM 10 A. YES.

10:37AM 11 Q. AND THOSE LETTERS ARE AA?

10:37AM 12 A. YES.

10:37AM 13 Q. LET ME NEXT DRAW YOUR ATTENTION TO EXHIBIT 5471.

10:37AM 14 IS THIS A LETTER DATED APRIL 1ST, 2016?

10:37AM 15 A. YES.

10:37AM 16 Q. ROUGHLY THREE MONTHS AFTER THE 2567 WAS ISSUED?

10:37AM 17 A. YES.

10:37AM 18 Q. OKAY. AND IN THE RE LINE, DO YOU SEE MR. BALWANI'S NAME

10:37AM 19 IN THE RE LINE?

10:37AM 20 A. YES.

10:37AM 21 Q. SITTING HERE TODAY, DO YOU KNOW IF HE WAS OR WAS NOT WITH

10:37AM 22 THE COMPANY IN APRIL OF 2016?

10:37AM 23 A. I DON'T KNOW.

10:37AM 24 Q. OKAY. AND IF I DRAW YOUR ATTENTION TO PAGE 50.

10:38AM 25 IN THE FIRST FULL PARAGRAPH OF PAGE 50, DO YOU SEE A

10:38AM 1 REFERENCE TO EXHIBIT AA?

10:38AM 2 A. YES.

10:38AM 3 Q. AND BASED ON THE SUBJECT MATTER IN THIS PARAGRAPH AND THE  
10:38AM 4 REFERENCE TO AA, DO YOU BELIEVE THAT YOU RECEIVED 4943 AT SOME  
10:38AM 5 POINT PRIOR TO APRIL OF 2016?

10:38AM 6 A. YES.

10:38AM 7 THE COURT: ALL RIGHT.

10:38AM 8 MR. LEACH: WE OFFER PAGES 1 AND 9 OF 4943.

10:38AM 9 MR. CAZARES: MY OBJECTION IS RELEVANCE DUE TO  
10:38AM 10 TIMING AND SUBJECT MATTER; HEARSAY DUE TO THE TRUTH OF THE  
10:38AM 11 MATTER IN THE ITEM; 403; AS WELL AS THIS IS THE SUBJECT OF THE  
10:38AM 12 COURT'S ORDER REGARDING MOTIONS IN LIMINE AT DOCKET 1326,  
10:38AM 13 PAGES 9 TO 12 RELATING TO ANOTHER WITNESS, THE AUTHOR,  
10:39AM 14 YOUR HONOR.

10:39AM 15 THE COURT: MR. LEACH.

10:39AM 16 MR. LEACH: THEY OPENED THE DOOR, YOUR HONOR, BY  
10:39AM 17 ASKING ABOUT WHY PATIENT IMPACT ISN'T IDENTIFIED IN THE 2667.

10:39AM 18 THIS IS DURING THE TIME PERIOD WHEN MR. BALWANI IS STILL  
10:39AM 19 THE COO. IT'S AN AUTHORIZED ADMISSION. IT SHOULD COME IN.

10:39AM 20 THE COURT: WELL, WHAT I'LL DO IS I'LL LOOK AT -- I  
10:39AM 21 WANT TO LOOK AT THE MIL ORDER AND REFERENCE THOSE PARAGRAPHS.

10:39AM 22 LET'S TAKE A BREAK, LADIES AND GENTLEMEN, SO WE CAN LOOK  
10:39AM 23 AT THIS. LET'S TAKE ABOUT A -- WELL, LET'S TAKE OUR 30 MINUTE  
10:39AM 24 BREAK NOW. MAYBE WE'LL TAKE THAT NOW.

10:40AM 25 (JURY OUT AT 10:40 A.M.)



10:40AM 1 THE COURT: YOU CAN STAND DOWN. THANK YOU.

10:40AM 2 (RECESS FROM 10:40 A.M. UNTIL 11:13 A.M.)

11:13AM 3 THE COURT: ALL RIGHT. THANK YOU.

11:13AM 4 WE'RE BACK ON THE RECORD. ALL PARTIES PREVIOUSLY PRESENT  
11:13AM 5 ARE PRESENT ONCE AGAIN.

11:13AM 6 WE'RE OUTSIDE OF THE PRESENCE OF THE JURY.

11:13AM 7 THE COURT DID, DURING THE RECESS, REVIEW DOCUMENT 1236 AND  
11:13AM 8 THE PAGES CITED BY COUNSEL, 9 TO 12, AS WELL AS OTHER ITEMS,  
11:13AM 9 PAGE 26 REGARDING THE COURT'S ORDER IN REGARDS TO THE RELEASE  
11:13AM 10 OF THE -- I GUESS IT'S THE 3.5 AND THE VOIDING OF THE TESTS.

11:14AM 11 WHAT WOULD THE PARTIES LIKE ME TO KNOW ABOUT THIS?

11:14AM 12 MR. CAZARES: YOUR HONOR, AS I SAID BEFORE,  
11:14AM 13 MR. LEACH'S THEORY IS THAT THE GOVERNMENT -- THE DEFENSE HAS  
11:14AM 14 OPENED DOOR TO VOIDING BY ASKING ABOUT PATIENT IMPACT OR EFFECT  
11:14AM 15 OF THE NONCOMPLIANCE ON THE PATIENTS WHO WERE TESTED DURING THE  
11:14AM 16 RELEVANT TIME PERIOD.

11:14AM 17 THE PROBLEM IS THAT EVEN IF THAT'S SO, AND I'M NOT SURE IT  
11:14AM 18 IS, THAT'S NOT AN EXCEPTION TO HEARSAY OR 702 EXPERT TESTIMONY  
11:14AM 19 OR OPINION TESTIMONY, WHICH IS ESSENTIALLY WHAT THIS DOCUMENT  
11:14AM 20 IS.

11:14AM 21 THE COURT WILL RECALL THAT DR. DAS AUTHORED A LETTER TO  
11:14AM 22 CMS DATED APRIL 1, 2016, INDICATING HIS CONCLUSIONS, INCLUDING  
11:14AM 23 HIS DECISION TO VOID ALL TESTS RUN ON THE THERANOS DEVICE.

11:14AM 24 THIS PATIENT IMPACT ASSESSMENT AT 4943 IS THE UNDERLYING  
11:15AM 25 WORK PRODUCT, IF YOU WILL, THAT DR. DAS PUT TOGETHER AND HIS

11:15AM 1 TEAM PUT TOGETHER OVER MONTHS OF ANALYSIS TO REACH THAT  
11:15AM 2 OPINION. THIS DOCUMENT ITSELF IS HEARSAY. IT'S 702 OPINION  
11:15AM 3 AFTER THE FACT, AFTER THE FACT OF THE UNDERLYING TESTING THAT  
11:15AM 4 TOOK PLACE.

11:15AM 5 AND I DON'T SEE HOW THIS WITNESS CAN TESTIFY TO ANYTHING  
11:15AM 6 ABOUT THIS DOCUMENT SIMPLY BECAUSE CMS MAY HAVE RECEIVED A  
11:15AM 7 LETTER THAT REFERENCED THE FACT THAT TESTS WERE VOIDED WITHOUT  
11:15AM 8 HAVING ANY FOUNDATION AS TO WHY, WHEN, WHO DID IT, AND WHAT WAS  
11:15AM 9 THE BASIS FOR THAT VOIDING.

11:15AM 10 AGAIN, SHE DOESN'T KNOW. SHE'LL OFFER SOME OPINIONS ABOUT  
11:15AM 11 HOW TERRIBLE THE DEVICE WAS IN HER OPINION, BUT, AGAIN, THAT'S  
11:15AM 12 NOT ADMISSIBLE EITHER. SHE'S NOT AN EXPERT WITNESS.

11:15AM 13 SO I DON'T SEE HOW THE GOVERNMENT GETS THIS DOCUMENT IN IN  
11:15AM 14 RELATION TO THIS ISSUE BASED ON THIS OPENING THE DOOR THEORY.

11:15AM 15 THE COURT: THROUGH THIS WITNESS?

11:16AM 16 MR. CAZARES: THROUGH THIS WITNESS.

11:16AM 17 THE COURT: DR. DAS IS A DIFFERENT DISCUSSION.

11:16AM 18 MR. CAZARES: DIFFERENT ISSUE TOTALLY.

11:16AM 19 THE COURT: MR. LEACH.

11:16AM 20 MR. LEACH: THANK YOU, YOUR HONOR.

11:16AM 21 THE DEFENSE ASKED NO FEWER THAN SIX TIMES AT PAGES 4970,  
11:16AM 22 5016, 4971, 4972, 4984, AND 4996 OF THE TRANSCRIPT, NO FEWER  
11:16AM 23 THAN SIX TIMES WHETHER CMS IDENTIFIED ANY ACTUAL PATIENT  
11:16AM 24 IMPACT.

11:16AM 25 IT HAS CREATED THE IMPRESSION WITH THE JURY THAT ALL OF

11:16AM 1 THE OBSERVATIONS BY CMS DON'T MATTER EITHER BECAUSE THEY'RE  
11:16AM 2 TECHNICAL OR IT DEALS WITH THE REFRIGERATOR OR THEY DON'T HAVE  
11:16AM 3 ANY REAL WORLD IMPACT, WHEN THE CONCLUSION -- WHEN THE OPPOSITE  
11:16AM 4 IS TRUE.

11:16AM 5 THERANOS ITSELF, IN A PATIENT IMPACT ASSESSMENT TO CMS,  
11:16AM 6 SAID, "THERE'S A POSSIBLE PATIENT IMPACT FOR EVERY TEST  
11:16AM 7 REPORTED FROM THE LABORATORY'S TPS 3.5 DEVICE."

11:17AM 8 THIS IS NECESSARY TO DISPEL THE IMPRESSION THAT THE  
11:17AM 9 DEFENSE HAS CREATED THROUGH ITS LINE OF QUESTIONING. IT'S NOT  
11:17AM 10 HEARSAY. IT'S A STATEMENT BY A PARTY OPPONENT. IT'S EITHER AN  
11:17AM 11 ADOPTED ADMISSION, AN AUTHORIZED ADMISSION, OR A STATEMENT OF  
11:17AM 12 AN AGENT.

11:17AM 13 MR. BALWANI WAS THE COO OF THE COMPANY AT THE TIME.  
11:17AM 14 MS. BENNETT HAS TESTIFIED THAT HE LED THE TEAM THAT WAS  
11:17AM 15 RESPONDING TO THE CMS INSPECTION, SO IT'S NOT HEARSAY.

11:17AM 16 THE VOIDING OF THE TEST, THERE'S BEEN EXTENSIVE LITIGATION  
11:17AM 17 OVER THIS. IT'S NOT AN EXPERT OPINION. IT'S AN ACTION BY THE  
11:17AM 18 COMPANY DURING THE TIME PERIOD WHEN MR. BALWANI WAS THE COO.

11:17AM 19 AND IT'S NECESSARY TO DISPEL THE IMPRESSION THAT THE  
11:17AM 20 DEFENSE HAS CREATED THAT THERE WAS NO POTENTIAL IMPACT TO  
11:17AM 21 PATIENTS BASED ON CMS'S OBSERVATIONS.

11:17AM 22 IT'S NOT HEARSAY UNDER 801(D)(2), AND THEY HAVE OPENED THE  
11:18AM 23 DOOR TO THIS.

11:18AM 24 IF THE ISSUE IS THE VOIDING AS OPPOSED TO THE STATEMENTS  
11:18AM 25 THAT THERANOS IS MAKING TO CMS AND EVIDENCE OF WHY CMS WOULD

11:18AM 1 NOT CITE POSSIBLE PATIENT IMPACT BECAUSE THAT'S THE  
11:18AM 2 LABORATORY'S JOB, I THINK THAT COULD BE CURED BY REDACTING THE  
11:18AM 3 LAST PARAGRAPH OF PAGE 9 UNDER CORRECTIVE ACTION WHERE IT  
11:18AM 4 REFERS TO THE VOIDING.

11:18AM 5 WHAT I'M MOST FOCUSSED ON IS THE PARAGRAPH ABOVE THAT  
11:18AM 6 TALKING ABOUT PATIENT IMPACT.

11:18AM 7 THE COURT: THANK YOU.

11:18AM 8 I DON'T KNOW IF THAT CHANGES YOUR RATIONALE AT ALL. THERE  
11:18AM 9 WAS TESTIMONY FROM THIS WITNESS, MS. BENNETT, ABOUT REASONS FOR  
11:18AM 10 IMPACT ON PATIENTS AND HOW IT MIGHT -- CMS'S OPINION ON HOW  
11:18AM 11 THAT MIGHT AFFECT AND REASONS FOR WHY THEY DID CERTAIN THINGS.

11:18AM 12 MR. CAZARES: IN HER DIRECT EXAMINATION IN RESPONSE  
11:18AM 13 TO THE GOVERNMENT'S QUESTIONS, SHE DESCRIBED IMMEDIATE JEOPARDY  
11:18AM 14 AND THE POTENTIAL -- ACTUAL HARM, POTENTIAL HARM, POSSIBILITY  
11:19AM 15 OF HARM.

11:19AM 16 THAT WAS THE GOVERNMENT. THAT WASN'T ME. THAT WAS THEM  
11:19AM 17 ELICITING TESTIMONY FROM HER ABOUT WHAT IMMEDIATE JEOPARDY  
11:19AM 18 MEANT.

11:19AM 19 I, IN CROSS, RAISED THE SAME ISSUE CONFIRMING WHERE WITHIN  
11:19AM 20 THAT SPECTRUM SHE HAD EVIDENCE OF, AND SHE DID NOT HAVE  
11:19AM 21 EVIDENCE OF ACTUAL HARM, JUST POSSIBILITIES, WAS THE CROSS  
11:19AM 22 RESPONSE TO THOSE QUESTIONS.

11:19AM 23 THE -- GETTING BACK TO THE DOCUMENT, THOUGH, THIS IS ABOUT  
11:19AM 24 TWO OR THREE LAYERS OF HEARSAY, EVEN FROM THE LETTER, BECAUSE  
11:19AM 25 THE APRIL 1ST LETTER, WHICH THE GOVERNMENT ISN'T TRYING TO

11:19AM 1 INTRODUCE RIGHT NOW, THEY'RE TRYING TO INTRODUCE THE WORK  
11:19AM 2 PRODUCT UNDERLYING IT.

11:19AM 3 THESE ARE LIKE A COLLECTIVE WORK PRODUCT OF MULTIPLE  
11:19AM 4 PARTIES, NOT JUST DR. DAS HIMSELF -- WHO, BY THE WAY, IS NOT  
11:19AM 5 HERE TESTIFYING. HE'S ALSO NOT AN AGENT OF MR. BALWANI.

11:19AM 6 THERANOS ISN'T A DEFENDANT IN THIS CASE. DR. DAS WAS AN  
11:19AM 7 AGENT OF THERANOS ON APRIL 1, 2016, AND BY THAT TIME I THINK  
11:20AM 8 DR. DAS TESTIFIED IN THIS COURTROOM HE HAD HAD ALMOST LITTLE OR  
11:20AM 9 NO CONTACT WITH MR. BALWANI EVEN WHEN MR. BALWANI WAS THERE.

11:20AM 10 SO I'M NOT SURE THERE'S ANY AGENCY THEORY THAT IS GOING TO  
11:20AM 11 SOMEHOW UNDERMINE A HEARSAY OBJECTION.

11:20AM 12 THE COURT: SO I DON'T KNOW IF DR. DAS IS GOING TO  
11:20AM 13 TESTIFY IN THIS TRIAL. ASSUMING HE DOES AND HE TESTIFIES ABOUT  
11:20AM 14 VOIDING, ACTIONS TAKEN, HE MAY DO THAT, I DON'T KNOW. HE WOULD  
11:20AM 15 CERTAINLY BE ASKED, IF HE WERE -- MY SENSE IS THAT HE WOULD BE  
11:20AM 16 ASKED ABOUT HIS WORK THAT HE DID, AND I GUESS WHAT I'M SAYING  
11:20AM 17 IS THAT, MR. LEACH, IS IT LIKELY THAT THIS IS GOING TO COME IN  
11:20AM 18 THROUGH DR. DAS? OR CAN YOU REVEAL THAT NOW?

11:20AM 19 MR. LEACH: I DON'T THINK IT RISES OR FALLS,  
11:20AM 20 YOUR HONOR, ON WHETHER DR. DAS ACTUALLY TESTIFIES.

11:20AM 21 THE COURT: I AGREE. I AGREE.

11:20AM 22 MR. LEACH: YEAH. AND THE GOVERNMENT HAS NOT MADE A  
11:20AM 23 FINAL DECISION IN THAT REGARD.

11:20AM 24 THE COURT: OKAY.

11:20AM 25 MR. LEACH: IT WAS NOT MY INTENTION TO OFFER THIS

11:20AM 1 EXHIBIT THROUGH MS. BENNETT UNTIL THE DEFENDANT STARTED ASKING  
11:20AM 2 QUESTIONS ABOUT POSSIBLE PATIENT IMPACT, AND WE THINK IT'S  
11:21AM 3 RELEVANT FOR THOSE PURPOSES.

11:21AM 4 BUT WE HAVE NOT MADE A FINAL DECISION ON DR. DAS.

11:21AM 5 THE COURT: OKAY. OKAY. FAIR ENOUGH.

11:21AM 6 WELL, THE ISSUE OF PATIENT IMPACT IS COMING IN, AND THE  
11:21AM 7 CORRECTIVE ACTION, AND I APPRECIATE MR. LEACH'S REPRESENTATION  
11:21AM 8 THAT THAT'S -- HE'S NOT PUSHING THAT THAT COME IN.

11:21AM 9 AND I THINK THAT'S -- THAT MIGHT BE A BRIDGE TOO FAR FOR  
11:21AM 10 THIS PURPOSE, THAT IS THE CORRECTIVE ACTION PARAGRAPH.

11:21AM 11 ABOVE IT IS THE PARAGRAPH PATIENT IMPACT. AND WE HAVE  
11:21AM 12 HEARD TESTIMONY, BOTH ON DIRECT AND CROSS, REGARDING CMS'S AND  
11:21AM 13 THIS WITNESS'S THOUGHTS AND OPINIONS ABOUT PATIENT IMPACT.

11:21AM 14 I HAVEN'T REVIEWED THE TRANSCRIPT JUST RECENTLY, BUT I DO  
11:21AM 15 REMEMBER HER TESTIFYING, SOME OF HER LAST TESTIMONY WAS  
11:21AM 16 REGARDING PATIENT IMPACT FROM BOTH OF YOU.

11:21AM 17 MR. CAZARES: WELL, BUT THAT'S THE POINT,  
11:21AM 18 YOUR HONOR.

11:21AM 19 THE GOVERNMENT'S THEORY RIGHT NOW IS I HAVE OPENED THE  
11:21AM 20 DOOR, THE DEFENSE HAS OPENED THE DOOR.

11:21AM 21 THEY ASKED THE QUESTIONS ABOUT WHETHER IMMEDIATE JEOPARDY  
11:22AM 22 RELATES TO ACTUAL HARM, POTENTIAL HARM, AND MS. BENNETT  
11:22AM 23 RESPONDED AND DEFINED WHAT ALL OF THAT MEANT, WHICH INCLUDED  
11:22AM 24 ACTUAL OR POTENTIAL HARM, AND I FOLLOWED UP.

11:22AM 25 AGAIN, TO CABIN THAT, I DIDN'T INTRODUCE A NEW CONCEPT,

11:22AM 1 JUST THE FACT THAT SHE DIDN'T HAVE EVIDENCE OF ONE PORTION OF  
11:22AM 2 THE DEFINITION OF IMMEDIATE JEOPARDY, SO THERE'S NO OPENING THE  
11:22AM 3 DOOR BY THE DEFENSE HERE.

11:22AM 4 AND AGAIN, WHILE I APPRECIATE THAT THE CORRECTIVE ACTION  
11:22AM 5 LANGUAGE MAY BE OMITTED, BUT THERE'S OTHER DESCRIPTIONS OF WORK  
11:22AM 6 AND ANALYSIS BY DR. DAS AND HIS TEAM, IT'S NOT JUST HIM, DOING  
11:22AM 7 ANALYSIS OF PATIENT RESULTS.

11:22AM 8 MS. BENNETT HAS TESTIFIED RIGHT NOW, SHE DIDN'T DO ANY  
11:22AM 9 ANALYSIS OF PATIENT RESULTS, JUST THE TIME PERIODS WHEN  
11:22AM 10 PATIENTS WERE TESTED RELATIVE TO NONCOMPLIANCE.

11:22AM 11 IT'S NOT THE SAME THING.

11:22AM 12 AGAIN, THIS IS TESTIMONY ESSENTIALLY THAT THEORETICALLY  
11:22AM 13 WOULD NEED TO COME FROM SOMEBODY, DR. DAS OR SOMEONE AT THE  
11:22AM 14 LAB, ABOUT THIS WORK DONE TO REACH THIS CONCLUSION THAT THERE  
11:23AM 15 MAY HAVE BEEN SOME PATIENT IMPACT, THEREFORE, THERANOS WAS  
11:23AM 16 GOING TO DO SOMETHING, TAKE SOME ACTION, WHICH MS. BENNETT HAS  
11:23AM 17 ALREADY MADE CLEAR, CMS DOESN'T DO THAT, THE LAB IS RESPONSIBLE  
11:23AM 18 FOR THAT.

11:23AM 19 THE COURT: HAS SHE TESTIFIED THAT -- ABOUT THE  
11:23AM 20 POTENTIAL FOR PATIENT IMPACT FOR EVERY TEST FROM THE 3.5, FROM  
11:23AM 21 THE EDISON? WHAT HAS SHE TESTIFIED ABOUT THAT?

11:23AM 22 MR. LEACH: DURING HER DIRECT EXAMINATION,  
11:23AM 23 YOUR HONOR, THE GOVERNMENT SHOWED QUALITY CONTROL RESULTS  
11:23AM 24 RELATING TO THE EDISON 3.5 AND ASKED HER WHETHER THESE WERE  
11:23AM 25 DESIRABLE OR UNDESIRABLE RESULTS. SHE SAID THEY WERE

11:23AM 1 UNDESIRABLE.

11:23AM 2 I DON'T THINK I ASKED IN THE MOMENT, DO THESE QUALITY  
11:23AM 3 CONTROL RESULTS HAVE IMPLICATION FOR PATIENTS, BUT I ANTICIPATE  
11:23AM 4 HER ANSWER WOULD BE ABSOLUTELY.

11:23AM 5 MR. CAZARES: THE SURVEY REPORT ITSELF, THOUGH,  
11:23AM 6 WHICH IS IN EVIDENCE, IDENTIFIES PATIENT NUMBERS, ASCENSION  
11:24AM 7 NUMBERS IN RELATION TO THE QC ISSUES THAT THE GOVERNMENT  
11:24AM 8 POINTED OUT WITH MS. BENNETT.

11:24AM 9 SO THE IMPLICATION IS ALREADY THERE. VIOLATION, PATIENT  
11:24AM 10 RESULTS WERE RELEASED CONTEMPORANEOUSLY. THAT WAS IN THE  
11:24AM 11 PORTIONS OF THE SURVEY REPORT THAT THE GOVERNMENT REVIEWED.

11:24AM 12 SO THEY HAVE ALREADY KIND OF SHOWN THAT AND GOTTEN INTO IT  
11:24AM 13 WITHOUT HAVING HER TO ELABORATE.

11:24AM 14 THE COURT: AND WE DON'T KNOW WHETHER SHE HAS SEEN  
11:24AM 15 THIS OR NOT? OR SHE HAS SEEN THIS?

11:24AM 16 MR. LEACH: SHE HAS SEEN THIS.

11:24AM 17 THE COURT: SHE HAS SEEN THIS?

11:24AM 18 MR. LEACH: YES.

11:24AM 19 THE COURT: AND DID THIS FORM -- HAS IT BEEN ASKED,  
11:24AM 20 DID THIS FORM THE BASIS OF ANY OF HER REPORTS OR HER FINDINGS?

11:24AM 21 MR. LEACH: I DON'T THINK IT CONTRIBUTES TO THE 2567  
11:24AM 22 ITSELF, YOUR HONOR, BECAUSE THAT'S CAME IN JANUARY.

11:24AM 23 BUT I DO ANTICIPATE, I THINK SHE SAID SOMETHING TO THIS  
11:24AM 24 EFFECT, AND IF NOT, I CAN CLEAR THAT UP, THAT SHE DID REVIEW  
11:24AM 25 THIS, THAT SHE DID EVALUATE IT, THAT IT WAS PART OF HER



11:24AM 1 ASSESSMENT OF WHETHER THE LAB APPROPRIATELY RESPONDED TO THE  
11:25AM 2 DEFICIENCIES THAT THEY IDENTIFIED.

11:25AM 3 SO THIS IS IMPORTANT INFORMATION FOR HER WORK, BUT I'M NOT  
11:25AM 4 SURE THAT I HAVE ASKED THAT PRECISE QUESTION.

11:25AM 5 MR. CAZARES: AND, YOUR HONOR, WHAT IT TIES INTO IS,  
11:25AM 6 AGAIN, MR. BALWANI'S RELATIONSHIP.

11:25AM 7 SO THE ANALYSIS AND THE INFORMATION SHARED BY DR. DAS AND  
11:25AM 8 HIS TEAM IN RELATION TO THIS PATIENT IMPACT ASSESSMENT WAS THEN  
11:25AM 9 TRANSMITTED TO CMS, THEY USED IT OVER THE SPRING AND SUMMER OF  
11:25AM 10 2016 TO REACH THEIR CONCLUSIONS THAT MR. LEACH DOESN'T WANT TO  
11:25AM 11 REFERENCE BECAUSE THAT'S OUT IN JULY OF 2016 WHEN MR. BALWANI  
11:25AM 12 IS GONE AND WHEN MR. BALWANI IS NOT INVOLVED IN ANY DECISION  
11:25AM 13 MAKING AT THAT TIME.

11:25AM 14 SO THERE'S NO CONNECTION TO ANY DECISION CMS MADE OR ANY  
11:25AM 15 DECISION THAT MS. BENNETT MADE FROM THIS DOCUMENT BECAUSE IT  
11:25AM 16 DOESN'T RELATE TO MR. BALWANI'S WORK.

11:25AM 17 THE COURT: WELL, I WANT TO TIME STAMP IT, TOO. HE  
11:25AM 18 LEFT IN JULY OF 2016, SOMETIME IN 2016.

11:25AM 19 MR. CAZARES: YES.

11:25AM 20 THE COURT: THE LAB IN MS. BENNETT'S WORK WAS WHEN?

11:26AM 21 MR. LEACH: THE INSPECTION BEGINS IN SEPTEMBER OF  
11:26AM 22 2015 AND THE REPORT IS JANUARY OF 2016, AND THIS IS PROVIDED  
11:26AM 23 SOMETIME BEFORE APRIL OF 2016.

11:26AM 24 THE COURT: RIGHT. RIGHT.

11:26AM 25 SO I LOOKED AT THAT AND IT SEEMED TO ME THAT IT CABINS

11:26AM 1 WITH MR. BALWANI'S TENURE AT THE COMPANY.

11:26AM 2 MR. CAZARES: WELL, HE WAS STILL -- I GUESS YOU

11:26AM 3 COULD SAY HE WAS AN EMPLOYEE --

11:26AM 4 THE COURT: RIGHT.

11:26AM 5 MR. CAZARES: -- OF CMS. HE WAS NOT DR. DAS'S

11:26AM 6 SUPERVISOR.

11:26AM 7 THE COURT: OF THERANOS.

11:26AM 8 MR. CAZARES: DR. DAS WAS NOT MR. BALWANI'S AGENT.

11:26AM 9 MR. BALWANI LEFT, HE RESIGNED IN MAY.

11:26AM 10 HE CONTINUED ON ESSENTIALLY IN A KIND OF CONSULTANT MANNER

11:26AM 11 TO RESPOND TO QUESTIONS AS THE TRANSITION TO FILL WHATEVER HE

11:26AM 12 DID AT THE COMPANY CONTINUED.

11:26AM 13 AND, YES, HIS EFFECTIVE LAST DATE IN THE DOOR I THINK WAS

11:26AM 14 THE SECOND WEEK OR THE THIRD WEEK OF JULY.

11:26AM 15 THE COURT: JULY 7TH, I BELIEVE.

11:26AM 16 MR. CAZARES: JULY 7TH.

11:26AM 17 BUT HE WAS GONE BY MAY AND HAD NO IMPACT OR NO ROLE IN THE

11:26AM 18 INTERACTIONS WITH CMS AFTER THE APRIL 1, 2016 LETTER BY DAS.

11:27AM 19 THE COURT: BUT THIS DOCUMENT IS DATED?

11:27AM 20 MR. LEACH: SOMETIME BETWEEN JANUARY OF 2016 AND

11:27AM 21 APRIL OF 2016.

11:27AM 22 THE COURT: SO WHILE HE'S STILL THERE IN SOME

11:27AM 23 CAPACITY.

11:27AM 24 MR. CAZARES: THEORETICALLY, YEAH.

11:27AM 25 THE COURT: RIGHT. AND THE TABLE OF CONTENTS, WHY

11:27AM 1 IS THAT RELEVANT, MR. LEACH?

11:27AM 2 MR. LEACH: JUST TO --

11:27AM 3 THE COURT: WHAT DOES THAT SHOW?

11:27AM 4 MR. LEACH: JUST TO ORIENT. JUST FOR CONTEXT FOR  
11:27AM 5 PAGE 9. I'M HAPPY TO LIVE WITHOUT PAGE 1, YOUR HONOR.

11:27AM 6 THE COURT: WELL, I THINK -- I THOUGHT THAT THAT  
11:27AM 7 MIGHT BE WHAT IT'S FOR.

11:27AM 8 AS TO LAYING A FOUNDATION FOR THIS PATIENT IMPACT, PAGE 9,  
11:27AM 9 I'M GOING TO ALLOW YOU TO MAKE SOME INQUIRY INTO THIS FROM THIS  
11:27AM 10 WITNESS AND FOLLOW UP ON THIS.

11:27AM 11 THERE HAS BEEN DISCUSSION ABOUT PATIENT IMPACT. BOTH OF  
11:27AM 12 YOU HAVE ASKED HER QUESTIONS AS TO WHETHER OR NOT THAT IMPACT  
11:27AM 13 WOULD BE THERE.

11:27AM 14 I RECALL, I THINK, HER MOST RECENT TESTIMONY WAS THAT SHE  
11:27AM 15 TALKED ABOUT PATIENT IMPACT AND THE NEGATIVE EFFECT IT WOULD  
11:28AM 16 HAVE ON PATIENTS BASED ON AN INCORRECT RESULT.

11:28AM 17 I THINK YOU GOT THAT IN. THAT WAS ONE OF THE LAST THINGS  
11:28AM 18 THAT YOU WERE ASKING HER BEFORE WE TOOK OUR BREAK.

11:28AM 19 SO I'LL ALLOW YOU TO CONTINUE TO EXAMINE THAT.

11:28AM 20 AS FAR AS THE TIME STAMPING AND THE REFERENCE TO THE  
11:28AM 21 PAGES 9 THROUGH 12 OF 1326, LOOKING AT THAT, YOU CAN SEE THAT  
11:28AM 22 THE COURT DEFERRED ANY RULING ON THAT CONTINGENT ON A  
11:28AM 23 CONNECTION WITH MR. BALWANI AND HIS EMPLOYMENT WITH THE  
11:28AM 24 COMPANY.

11:28AM 25 IT APPEARS, BASED ON OUR CONVERSATION HERE, THAT THE

11:28AM 1 REPORT, THE INSPECTION CERTAINLY OCCURRED WHILE HE WAS THERE.

11:28AM 2 THE -- THIS REPORT, IF IT'S TIME STAMPED, AND I DON'T KNOW  
11:28AM 3 HOW YOU DO THAT, BUT IF IT'S TIME STAMPED IN THAT SAME PERIOD,  
11:28AM 4 I WILL ALLOW SOME DISCUSSION ON IT.

11:28AM 5 WHETHER OR NOT I'M GOING TO ALLOW YOU TO DISPLAY JUST THE  
11:29AM 6 PATIENT IMPACT, WE WON'T DO THE CORRECTIVE ACTION THROUGH THIS  
11:29AM 7 WITNESS, BUT WHETHER OR NOT JUST THAT PATIENT IMPACT PORTION IS  
11:29AM 8 ADMITTED WILL REMAIN TO BE SEEN.

11:29AM 9 BUT I'LL LET YOU EXAMINE SOME MORE ON THIS ON YOUR  
11:29AM 10 REDIRECT, AND, OF COURSE, THERE WILL BE RECROSS ON THIS AS  
11:29AM 11 WELL.

11:29AM 12 MR. CAZARES: AND, YOUR HONOR, WITH RESPECT TO THE  
11:29AM 13 PATIENT IMPACT, AGAIN, WE BELIEVE IT'S ALSO AN OPINION OF A  
11:29AM 14 WITNESS, NOT MS. BENNETT, BASED ON EXPERT ANALYSIS.

11:29AM 15 AND EVEN IF NOT, IT'S A LAY OPINION FROM SOMEONE WHO IS  
11:29AM 16 NOT HERE TESTIFYING.

11:29AM 17 THE COURT: SURE.

11:29AM 18 MR. CAZARES: SO EITHER WAY IT'S OPINION.

11:29AM 19 IT'S NOT SOME SORT OF BUSINESS RECORD IN THE REGULARLY  
11:29AM 20 CONDUCTED COURSE OF BUSINESS, BECAUSE THIS WAS ANYTHING BUT  
11:29AM 21 REGULAR, THE CMS INSPECTION, WHAT HAPPENED AT THERANOS.

11:29AM 22 THE COURT: WELL, WE'LL SEE WHAT FOUNDATION IS LAID.

11:29AM 23 I UNDERSTAND. I UNDERSTAND THAT.

11:29AM 24 IT MAY BE THAT SHE'LL TESTIFY ABOUT THIS, AND THE DOCUMENT  
11:29AM 25 MAY NOT BE NEEDED. I DON'T KNOW. WE'LL SEE.

11:29AM 1 BUT THANK YOU FOR THAT. I APPRECIATE YOU RAISING THAT.

11:29AM 2 SHOULD WE TALK ABOUT SOMETHING ELSE NOW WHILE WE -- WAS

11:30AM 3 THERE SOMETHING ELSE ABOUT THE NEXT WITNESS?

11:30AM 4 MR. LEACH: THERE IS ANOTHER ISSUE WITH RESPECT TO  
11:30AM 5 THE NEXT WITNESS, YOUR HONOR.

11:30AM 6 THE COURT: WHY DON'T WE PREVIEW THAT NOW?

11:30AM 7 MR. LEACH: I'LL PASS THE MIKE.

11:30AM 8 MR. CAZARES: THANK YOU, YOUR HONOR.

11:30AM 9 IT'S RELATING TO AN EXHIBIT THAT THE GOVERNMENT NOTICED IT  
11:30AM 10 INTENDED TO USE WITH MR. MOSLEY, AND MS. ESTRADA IS GOING TO  
11:30AM 11 ADDRESS THIS ISSUE FOR MR. BALWANI.

11:30AM 12 THE COURT: ALL RIGHT. THANK YOU.

11:30AM 13 MS. ESTRADA: GOOD MORNING, YOUR HONOR.

11:30AM 14 SHAWN ESTRADA ON BEHALF OF MR. BALWANI.

11:30AM 15 MAY I REMOVE MY MASK?

11:30AM 16 THE COURT: YES. THANK YOU.

11:30AM 17 MS. ESTRADA: THANK YOU.

11:30AM 18 THE ISSUE WE WOULD LIKE TO ADDRESS BEFORE THE COURT  
11:30AM 19 BRIEFLY TODAY RELATES TO EXHIBIT 2065. I HAVE COPIES I CAN  
11:30AM 20 PASS UP TO THE COURT.

11:30AM 21 THE COURT: THANK YOU.

11:30AM 22 MS. ESTRADA: I ASSUME THE GOVERNMENT HAS ONE.

11:30AM 23 (HANDING.)

11:31AM 24 EXHIBIT 2065 IS AN EMAIL CHAIN FROM OCTOBER OF 2014  
11:31AM 25 BETWEEN MR. BALWANI, MS. HOLMES, AND MR. HOLMES.

11:31AM 1 AND THE GOVERNMENT INTENDS TO OFFER IT THROUGH MR. MOSLEY,  
11:31AM 2 WHO IS NOT A PARTY TO THIS EMAIL.

11:31AM 3 AND THIS IS AN EMAIL CHAIN REGARDING ACTION PLANNING IS  
11:31AM 4 THE WORDS THAT MR. HOLMES USES, REGARDING BLOOD TESTING THAT  
11:31AM 5 WAS GOING TO OCCUR FOR A PRIVATE EQUITY FIRM, BDT AT WALGREENS  
11:31AM 6 IN RELATION TO A VIP MEETING THAT WAS GOING TO TAKE PLACE  
11:31AM 7 BETWEEN BDT AND THERANOS.

11:31AM 8 AND WE WOULD OBJECT ON THE GROUNDS OF FOUNDATION, 403, AND  
11:31AM 9 HEARSAY.

11:31AM 10 THERE ARE SOME STATEMENTS PARTICULARLY TOWARDS THE BOTTOM  
11:31AM 11 OF PAGE 1 UNDERNEATH THE HEADER SCENARIO 1, THE LAST BULLET  
11:31AM 12 POINT, THAT CONTAINS AN OFFHAND COMMENT MADE BY MR. HOLMES THAT  
11:32AM 13 THE JURY COULD INFER SOMETHING NEFARIOUS THAT MR. BALWANI  
11:32AM 14 EITHER CONDONED OR TOOK PART IN, AND WITHOUT ANY CONTEXT FROM  
11:32AM 15 MR. MOSLEY, THAT -- THIS EMAIL IS INADMISSIBLE UNDER RULE 403,  
11:32AM 16 AND I CAN ADDRESS THE HEARSAY ISSUE IN A MOMENT.

11:32AM 17 THE COURT: I'M SORRY. THIS IS UNDER THE NEGATIVES,  
11:32AM 18 AND IT'S THE SECOND BULLET UNDER NEGATIVES?

11:32AM 19 MS. ESTRADA: THAT'S CORRECT, YOUR HONOR.

11:32AM 20 THE COURT: OKAY.

11:32AM 21 MS. ESTRADA: SO THAT BULLET POINT IN PARTICULAR IS  
11:32AM 22 PROBLEMATIC UNDER RULE 403, BUT ALSO FOR THE EMAIL CHAIN IN ITS  
11:32AM 23 ENTIRETY. MR. MOSLEY SIMPLY DOESN'T HAVE PERSONAL KNOWLEDGE OF  
11:32AM 24 THIS EMAIL.

11:32AM 25 AND SO IF I CAN SPEAK A LITTLE MORE SPECIFICALLY ABOUT

11:32AM 1 MR. MOSLEY'S LACK OF ANY RELATIONSHIP TO THIS EMAIL?

11:32AM 2 SO AS I MENTIONED, THIS IS AN EMAIL FROM MR. HOLMES SENT  
11:32AM 3 TO MR. BALWANI AND MS. HOLMES. THIS IS NOT WORDS OR LANGUAGE  
11:33AM 4 THAT MR. BALWANI USED. THESE ARE MR. HOLMES'S WORDS.

11:33AM 5 AND NOTHING FROM THE FACE OF THE EMAIL SHOWS WHETHER  
11:33AM 6 MR. BALWANI RESPONDED; WHETHER MR. BALWANI CONDONED WHAT  
11:33AM 7 MR. HOLMES SUGGESTED HERE; WHAT, IF ANYTHING, MR. BALWANI SAID  
11:33AM 8 IN A CONVERSATION EITHER BEFORE THE EMAIL OR AFTER THE EMAIL.

11:33AM 9 THERE'S NO CONTEXT THAT THE FACE OF THIS EMAIL CAN PROVIDE  
11:33AM 10 BASED ON WHAT REACTION THAT MR. BALWANI, IF ANY, HAD TO THAT  
11:33AM 11 PARTICULAR COMMENT OR TO THE EMAIL AS A WHOLE.

11:33AM 12 AND MR. MOSLEY, WHO IS NOT A PARTY TO THIS EMAIL, IS NOT  
11:33AM 13 AN EMPLOYEE OF THERANOS, CERTAINLY CAN'T PROVIDE THAT CONTEXT.

11:33AM 14 AND FOR THAT PARTICULAR STATEMENT, AND THIS EMAIL AS A  
11:33AM 15 WHOLE, TO BE PLACED BEFORE THE JURY WITHOUT ANY CONTEXT IS  
11:34AM 16 PREJUDICIAL UNDER RULE 403.

11:34AM 17 AND IN ADDITION, YOUR HONOR, BECAUSE MR. MOSLEY LACKS  
11:34AM 18 PERSONAL KNOWLEDGE OF THIS EMAIL IN PARTICULAR, AND ALSO THE  
11:34AM 19 INNER WORKINGS OF THE BLOOD TESTS AND DEMO PROCESS AT THERANOS,  
11:34AM 20 WE WOULDN'T HAVE ANY WAY OF MEANINGFULLY CROSS-EXAMINING HIM TO  
11:34AM 21 PROVIDE THAT CONTEXT. WE WOULDN'T BE ABLE TO ASK MR. MOSLEY,  
11:34AM 22 WELL, DO YOU KNOW ANYTHING ABOUT WHAT HAPPENED IN THIS  
11:34AM 23 CONVERSATION?

11:34AM 24 DO YOU KNOW ANYTHING ABOUT WHAT HAPPENED IN THIS  
11:34AM 25 PARTICULAR DEMO?

11:34AM 1 DO YOU KNOW ANYTHING ABOUT WHAT HAPPENED AT WALGREENS?

11:34AM 2 DO YOU KNOW ANYTHING ABOUT WHAT MR. BALWANI MAY HAVE SAID  
11:34AM 3 IN RESPONSE TO THIS, EITHER VIA EMAIL OR IN PERSON?

11:34AM 4 MR. MOSLEY JUST SIMPLY WOULDN'T KNOW THAT.

11:34AM 5 AND SO THAT LACK OF PERSONAL KNOWLEDGE MEANS THAT IT'S NOT  
11:34AM 6 APPROPRIATE FOR THIS EXHIBIT TO COME IN THROUGH HIM.

11:34AM 7 THE COURT: OKAY. THANK YOU.

11:35AM 8 SO MR. MOSLEY WAS AN INVESTOR, I BELIEVE. IS THAT RIGHT?

11:35AM 9 MS. ESTRADA: THAT'S CORRECT, YOUR HONOR.

11:35AM 10 THE COURT: AND HE WAS PART OF THE BDT GROUP THAT  
11:35AM 11 WAS -- THE EVIDENCE MAY SHOW THIS -- THAT WAS GOING TO BE  
11:35AM 12 TESTED? THIS VIP, HE'S PART OF THE VIP TOUR?

11:35AM 13 MS. ESTRADA: SO ACTUALLY, YOUR HONOR, WHAT IS  
11:35AM 14 CONFUSING ABOUT THIS IS THAT MR. MOSLEY WORKS AT BDT CURRENTLY,  
11:35AM 15 BUT AT THE TIME HE DID NOT.

11:35AM 16 HE WAS AN ATTORNEY AT THE CRAVATH FIRM. I EXPECT THAT  
11:35AM 17 MR. MOSLEY WILL TESTIFY THAT HE HAD MANY CONVERSATIONS WITH HIS  
11:35AM 18 CLIENTS WHO INVESTED IN THERANOS, OR AT THE VERY LEAST WERE  
11:35AM 19 INVOLVED IN CONVERSATIONS AND MEETINGS WITH MS. HOLMES, BUT  
11:35AM 20 BDT -- IT'S MY UNDERSTANDING THAT WHAT MR. MOSLEY WILL TESTIFY  
11:35AM 21 TO IS THAT HE DOESN'T KNOW WHETHER OR NOT BDT TESTIFIED. BDT  
11:36AM 22 WAS NOT ONE OF HIS CLIENTS.

11:36AM 23 AS FAR AS I'M AWARE, THE ONLY CONNECTION BETWEEN  
11:36AM 24 MR. MOSLEY AND BDT AND THERANOS IS THAT HE ATTENDED A  
11:36AM 25 CONFERENCE PRIOR TO, AND THAT'S HOW HE MET MS. HOLMES.



11:36AM 1 BUT THERE'S NO FOUNDATION THAT I THINK THAT MR. MOSLEY  
11:36AM 2 WILL BE ABLE TO LAY LINKING HIS KNOWING MR. TROTT, KNOWING  
11:36AM 3 PEOPLE THAT WORKED AT BDT, ATTENDING THAT CONFERENCE, TO THIS  
11:36AM 4 PARTICULAR EMAIL ABOUT BLOOD TESTING THAT WAS DONE AT  
11:36AM 5 WALGREENS.

11:36AM 6 THE COURT: OKAY. AND SO HE WASN'T A VIP WHO  
11:36AM 7 ATTENDED THIS?

11:36AM 8 MS. ESTRADA: NOT THIS -- MR. MOSLEY IS A VIP WHO  
11:36AM 9 HAD ATTENDED MEETINGS OF HIS OWN, BUT NOT THIS ONE, NO.

11:36AM 10 THE COURT: I SEE.

11:36AM 11 MS. ESTRADA: AND MR. MOSLEY HAD -- I EXPECT THAT HE  
11:36AM 12 WILL TESTIFY THAT HE RECEIVED BLOOD TESTING FROM WALGREENS  
11:36AM 13 HIMSELF, BUT IN JUNE OF 2015, AND THIS IS IN OCTOBER OF 2014.

11:36AM 14 THE COURT: OKAY. THANK YOU.

11:37AM 15 ON THE BOTTOM OF THE SHEET THAT I HAVE, IT SAYS FROM  
11:37AM 16 SUNNY BALWANI. IS THAT AN EMAIL?

11:37AM 17 MS. ESTRADA: OH, THAT'S AN EMAIL --

11:37AM 18 THE COURT: NEXT TO THE TOP.

11:37AM 19 MS. ESTRADA: -- ON THE SECOND PAGE, YOUR HONOR.

11:37AM 20 THE COURT: IS THAT RELATED TO THIS CHAIN?

11:37AM 21 MS. ESTRADA: SO AS I UNDERSTAND IT, THIS CHAIN  
11:37AM 22 CONTAINS ON PAGE 2 AN EMAIL FROM CHRISTIAN HOLMES, AND THEN  
11:37AM 23 MR. BALWANI WRITES THE NEXT EMAIL UP THAT SAYS, "DIANA, CAN YOU  
11:37AM 24 SEND CHRISTIAN," AND SO ON.

11:37AM 25 AND THEN MR. HOLMES -- THIS EMAIL THAT TAKES UP PRETTY

11:37AM 1 MUCH THE WHOLE FIRST PAGE IS FROM MR. HOLMES.

11:37AM 2 THE COURT: OKAY. DOES THAT HAVE ANYTHING TO DO  
11:37AM 3 WITH THE ANALYSIS, THAT IS, THAT MR. BALWANI IS IN THE MIDDLE  
11:37AM 4 OF THE CHAIN?

11:37AM 5 MS. ESTRADA: I DON'T THINK SO, YOUR HONOR, BECAUSE  
11:37AM 6 IN THIS CHAIN -- OR IN THIS EMAIL THAT MR. BALWANI SENDS, IT  
11:37AM 7 APPEARS THAT HE'S JUST SIMPLY ASKING HIS ASSISTANT, DIANA LEE,  
11:37AM 8 TO SEND PLAINTIFF A LIST OF PEOPLE FROM BDT WHO VISITED A FEW  
11:37AM 9 DAYS BACK.

11:38AM 10 AND SO MR. HOLMES THEN RESPONDS WITH -- I'M READING FROM  
11:38AM 11 THE BEGINNING OF THE EMAIL, "SEND ALONG OUR THOUGHTS FOR HOW TO  
11:38AM 12 ACCOMPLISH," AND THEN HE CONTINUES WITH BASICALLY HOW TO  
11:38AM 13 ACCOMPLISH THE PLAN, AND WHAT HE LAYS OUT AS DIFFERENT  
11:38AM 14 SCENARIOS FOR BLOOD TESTING AT WALGREENS THAT BDT IS TO  
11:38AM 15 EXPERIENCE.

11:38AM 16 SO THOSE REALLY AREN'T RELATED.

11:38AM 17 THE COURT: OKAY. THANK YOU.

11:38AM 18 MR. SCHENK.

11:38AM 19 MR. SCHENK: YES, YOUR HONOR, A FEW THOUGHTS.

11:38AM 20 FIRST, LET ME START WHERE THE COURT FINISHED, AND THAT IS  
11:38AM 21 THAT MR. BALWANI IS ON THIS EMAIL CHAIN WHERE MS. HOLMES,  
11:38AM 22 MR. HOLMES, AND THE DEFENDANT ARE DISCUSSING HOW TO DECEIVE  
11:38AM 23 FOLKS FROM BDT.

11:38AM 24 AT THE VERY LEAST, THIS EXHIBIT, 2065, IS ADMISSIBLE FOR  
11:38AM 25 NOTICE TO MR. BALWANI, THAT IS, FOR KNOWLEDGE AND INTENT TO

11:38AM 1 MR. BALWANI.

11:38AM 2 IT IS ADMISSIBLE, THOUGH, BEYOND THAT. IT IS ADMISSIBLE  
11:38AM 3 FOR ITS TRUTH, AND IT IS ADMISSIBLE FOR THAT REASON UNDER  
11:39AM 4 803(6), THE BUSINESS RECORD EXCEPTION.

11:39AM 5 AND LET ME EXPLAIN. FIRST, THE COURT -- I AGREE WITH THE  
11:39AM 6 FACTUAL RECITATION THAT THE COURT JUST HEARD ABOUT WHAT  
11:39AM 7 MR. MOSLEY WOULD LIKELY SAY ABOUT THIS EMAIL, AND THAT IS, I  
11:39AM 8 DIDN'T WORK AT BDT AT THE TIME, AND I WAS NOT A PART OF THE  
11:39AM 9 GROUP OF INDIVIDUALS REFERENCED IN THIS EMAIL THAT WERE GOING  
11:39AM 10 TO VISIT A WALGREENS STORE.

11:39AM 11 HE WASN'T PART OF THAT GROUP.

11:39AM 12 MR. MOSLEY RECEIVED A SEPARATE PITCH AND A SEPARATE TEST,  
11:39AM 13 THE DEFENSE IS CORRECT, ON DIFFERENT DATES.

11:39AM 14 BUT IT IS STILL ADMISSIBLE AS A BUSINESS RECORD, AND THAT  
11:39AM 15 IS BECAUSE THE COURT HAS HEARD SUFFICIENT BUSINESS RECORD  
11:39AM 16 FOUNDATION ON THIS EXACT ISSUE FROM PRIOR WITNESSES.

11:39AM 17 THE DEFENSE THEMSELVES HAVE ESTABLISHED THE BUSINESS  
11:39AM 18 RECORD FOUNDATION THROUGH DAN EDLIN ON APRIL 13TH. THAT'S AT  
11:39AM 19 PAGE 2598 OF THE TRANSCRIPT.

11:39AM 20 THE GOVERNMENT ESTABLISHED BUSINESS RECORD -- I'M SORRY.

11:40AM 21 THE DEFENSE ESTABLISHED BUSINESS RECORD FOUNDATION THROUGH  
11:40AM 22 DR. ROSENDORFF ON APRIL 22ND ON PAGE 3546 OF THE TRANSCRIPT.

11:40AM 23 SO TWO INSTANCES, EDLIN AND ROSENDORFF, THE COURT HAS  
11:40AM 24 ALREADY HEARD THE BUSINESS RECORDS FOUNDATION THROUGH THE  
11:40AM 25 DEFENSE.

11:40AM 1 THERE ARE SEVERAL OTHER CITES THAT THE GOVERNMENT PROVIDED  
11:40AM 2 BUSINESS RECORDS FOUNDATION, AND THAT WAS EDLIN ON THE 6TH OF  
11:40AM 3 APRIL, PAGES 2379 THROUGH 2380.

11:40AM 4 THE GOVERNMENT ALSO PROVIDED BUSINESS RECORD FOUNDATION  
11:40AM 5 THROUGH DR. ROSENDORFF ON APRIL 20TH ON PAGE 3273 OF THE  
11:40AM 6 TRANSCRIPT.

11:40AM 7 SO FOUR INSTANCES THE COURT HAS ALREADY HEARD BUSINESS  
11:40AM 8 RECORD FOUNDATION FOR THIS TYPE OF EMAIL.

11:40AM 9 I CAN GO FURTHER, THOUGH.

11:40AM 10 THIS EXACT SITUATION, THAT IS, AN INTERNAL THERANOS EMAIL  
11:40AM 11 BEING OFFERED TO A WITNESS WHO IS NOT ON THAT EMAIL, WAS DONE  
11:41AM 12 BY THE DEFENSE. I CAN PASS UP THE EXHIBIT, AND I'LL PASS UP  
11:41AM 13 THE TRANSCRIPT.

11:41AM 14 THE DEFENSE DID THAT THROUGH DR. ROSENDORFF ON APRIL 22ND.  
11:41AM 15 THE EXHIBIT NUMBER WAS 7314, AND IT'S ON PAGE 3559 OF THE  
11:41AM 16 TRANSCRIPT.

11:41AM 17 SO I'M HANDING UP NOW -- (HANDING.)

11:41AM 18 I'M PASSING UP TO THE COURT A PORTION OF THE TRANSCRIPT  
11:41AM 19 AND THE EXHIBIT WHERE MR. COOPERSMITH, DURING DR. ROSENDORFF'S  
11:41AM 20 TESTIMONY, ADMITTED EXHIBIT 7314. THE COURT HAS A COPY NOW OF  
11:41AM 21 7314. THAT IS ONE EMAIL. IT'S TWO PAGES.

11:41AM 22 THE RECIPIENTS ON THE EMAIL ARE MS. HOLMES AND  
11:41AM 23 MR. BALWANI. THE SENDER WAS DR. YOUNG.

11:41AM 24 DR. ROSENDORFF WAS ON THE STAND. AND YOU CAN SEE FROM THE  
11:42AM 25 PORTION OF THE TRANSCRIPT THAT I PASSED UP MR. COOPERSMITH'S

11:42AM 1 ARGUMENTS TO THE COURT ARE PRECISELY WHAT WE'RE DEALING WITH  
11:42AM 2 RIGHT NOW, AND THAT IS, IT DOESN'T MATTER THAT THE WITNESS WHO  
11:42AM 3 IS ON THE STAND WASN'T ON THE EMAIL, THE EMAIL ITSELF APPEARS  
11:42AM 4 TO BE A BUSINESS RECORD.

11:42AM 5 AND THE COURT OVERRULED THE GOVERNMENT'S OBJECTION AND  
11:42AM 6 ADMITTED THE DOCUMENT AS A BUSINESS RECORD.

11:42AM 7 SO THE COURT SHOULD ADMIT 2065, THE EMAIL WE'RE NOW  
11:42AM 8 DISCUSSING, AS A BUSINESS RECORD BECAUSE IT'S HEARD SUFFICIENT  
11:42AM 9 FOUNDATION THROUGH TWO PRIOR WITNESSES, AND A PARTICULAR  
11:42AM 10 WITNESS ON THE STAND IS NOT RELEVANT TO THE ANALYSIS, PURSUANT  
11:42AM 11 TO THIS PRIOR INSTANCE THAT I'VE PROVIDED TO THE COURT,  
11:42AM 12 DR. ROSENDORFF AND AN EMAIL THAT DR. ROSENDORFF WASN'T ON.

11:42AM 13 THE DEFENSE'S ARGUMENT TO THE COURT JUST A MOMENT AGO WHEN  
11:42AM 14 SHE DESCRIBED THE CONTENT OF THE EMAIL WAS THESE ARE VIP'S  
11:42AM 15 GETTING A BLOOD TEST, AND THAT'S PRECISELY WHAT SOME OF THE  
11:43AM 16 BUSINESS RECORD CITATIONS I'VE PROVIDED TO THE COURT DEALT  
11:43AM 17 WITH; THAT IS, EDLIN AND ROSENDORFF EXPLAIN TO THIS JURY THAT  
11:43AM 18 EMAILS WITHIN THERANOS WERE USED TO ARRANGE AND PROVIDE THE  
11:43AM 19 CIRCUMSTANCES AND SETUPS FOR THESE KIND OF VIP DEMOS.

11:43AM 20 SO THE COURT HAS AND THIS JURY ALSO HAS A SUFFICIENT BASIS  
11:43AM 21 TO ADMIT THIS EMAIL AS A BUSINESS RECORD.

11:43AM 22 LET ME TOUCH JUST BRIEFLY ON THE 403 QUESTION. THE COURT  
11:43AM 23 SHOULD ADMIT IT AS NONHEARSAY, BUT ALSO IT HAS TO APPRECIATE  
11:43AM 24 WHETHER THE EMAIL IS TOO PREJUDICIAL.

11:43AM 25 AND THE FACT OF THE MATTER IS THAT IT IS NOT TOO

11:43AM 1 PREJUDICIAL. IT GOES TO THE HEART OF THE ISSUE THAT THE TWO  
11:43AM 2 SIDES HAVE BEEN ASKING THIS JURY TO WRESTLE WITH, AND THAT IS,  
11:43AM 3 WHAT DO INDIVIDUALS KNOW WHEN THEY RECEIVE DEMONSTRATIONS, WHEN  
11:43AM 4 VIP'S RECEIVE BLOOD TESTS?

11:43AM 5 AND WHEN MR. BALWANI IS ON THIS EMAIL CHAIN WHERE IT  
11:44AM 6 APPEARS WHAT MR. HOLMES WRITES PURSUANT TO INSTRUCTIONS FROM  
11:44AM 7 ELIZABETH HOLMES, WE KNOW THAT THESE INDIVIDUALS MUST RECEIVE A  
11:44AM 8 FINGERSTICK, AND IF CERTAIN TESTS NEED TO BE REMOVED IN ORDER  
11:44AM 9 TO GENERATE A FINGERSTICK, FINE, SO BE IT, DO THAT, BUT LET'S  
11:44AM 10 ANALYZE THE WAYS IN WHICH THE RECIPIENTS OF THE FINGERSTICK  
11:44AM 11 MIGHT BECOME AWARE OF THE FACT THAT CERTAIN TESTS WERE REMOVED  
11:44AM 12 IN ORDER TO GENERATE THE FINGERSTICK TEST.

11:44AM 13 AND THE ADVICE HERE, THERE'S A FEW OF THEM, THE COURT SEES  
11:44AM 14 UNDER SCENARIO 1 THERE'S CASE A AND CASE B. AND WHAT IS  
11:44AM 15 ANALYZED IS THE BENEFITS OR THE ADVANTAGES AND DISADVANTAGES TO  
11:44AM 16 EACH APPROACH, AND ONE OF THE RISKS OR NEGATIVES TO ONE OF THE  
11:44AM 17 APPROACHES IS THAT THEY MIGHT ACTUALLY HAVE TO PHYSICALLY  
11:44AM 18 DISTRACT BDT FROM LOOKING AT THE RECEIPT SO THAT THEY DON'T  
11:44AM 19 NOTICE THAT CERTAIN TESTS WERE REMOVED.

11:44AM 20 I AGREE IT'S PREJUDICIAL, BUT THAT'S WHAT MAKES IT  
11:44AM 21 RELEVANT.

11:44AM 22 IT IS NOT UNFAIRLY PREJUDICIAL BECAUSE, AGAIN, THIS IS THE  
11:45AM 23 HEART OF ONE OF THE ISSUES THAT THE PARTIES HAVE BEEN ASKING  
11:45AM 24 THIS JURY TO WRESTLE WITH, AND THAT JUST MAKES THIS EMAIL MORE  
11:45AM 25 RELEVANT.

11:45AM 1 THE COURT: THANK YOU.

11:45AM 2 MS. ESTRADA.

11:45AM 3 MS. ESTRADA: YES, YOUR HONOR.

11:45AM 4 SO THE DIFFERENCE BETWEEN WHAT MR. SCHENK JUST DESCRIBED  
11:45AM 5 AND THIS EMAIL IS EXHIBIT 7314 AS ADMITTED THROUGH  
11:45AM 6 DR. ROSENDORFF IS THAT DR. ROSENDORFF WAS A THERANOS EMPLOYEE.

11:45AM 7 WE -- THE GOVERNMENT WOULD HAVE BEEN ABLE, AFTER WE  
11:45AM 8 ADMITTED THIS EXHIBIT, TO ASK QUESTIONS OF DR. ROSENDORFF ABOUT  
11:45AM 9 WHAT WAS CONTAINED IN THIS EMAIL.

11:45AM 10 BUT MR. MOSLEY IS NOT AN EMPLOYEE OF THERANOS, AND SO HE  
11:45AM 11 DOESN'T HAVE THE PERSONAL KNOWLEDGE TO ALLOW ANY MEANINGFUL  
11:45AM 12 CROSS-EXAMINATION OF EXHIBIT 2065.

11:45AM 13 AND IN ADDITION TO THAT, YOUR HONOR, THE WITNESS ON THE  
11:45AM 14 STAND HAS TO BE ABLE TO LAY THE FOUNDATION FOR A BUSINESS  
11:45AM 15 RECORD.

11:45AM 16 MR. EDLIN WAS ABLE TO LAY THE FOUNDATION WITH RESPECT TO  
11:46AM 17 BUSINESS RECORDS THAT -- BECAUSE HE WORKED AT THE COMPANY. HE  
11:46AM 18 WAS FAMILIAR WITH HOW EMAIL WAS USED WITH RESPECT TO VIP DEMOS.

11:46AM 19 SAME WITH DR. ROSENDORFF.

11:46AM 20 BUT MR. MOSLEY IS NOT AN EMPLOYEE OF THERANOS, AND HE  
11:46AM 21 HAS -- HE'S NOT ABLE TO LAY THAT FOUNDATION. HE DOESN'T HAVE  
11:46AM 22 THE PERSONAL KNOWLEDGE.

11:46AM 23 THE COURT: SO, SO LET ME STOP YOU THERE AND ASK  
11:46AM 24 MR. SCHENK THAT.

11:46AM 25 THAT WAS A THOUGHT THAT I HAD. IRRESPECTIVE OF THE FACT

11:46AM 1 THAT PREVIOUS SCENARIOS LIKE THIS HAVE COME UP AND THE COURT  
11:46AM 2 HAS ADMITTED OTHER DOCUMENTS UNDER THE 803(6) EXCEPTION, HOW,  
11:46AM 3 HOW WOULD THAT WORK WITH THIS WITNESS IF HE LACKS THAT  
11:46AM 4 KNOWLEDGE, OR WHAT FOUNDATION WOULD YOU LAY FOR THAT?

11:46AM 5 MR. SCHENK: I WOULD LAY NO FOUNDATION FOR THE EMAIL  
11:46AM 6 THROUGH MR. MOSLEY. HE COULD NOT PROVIDE THAT FOUNDATION.

11:46AM 7 SO IF THE DEFENSE IS CORRECT THAT EVERY TIME YOU ADMIT A  
11:46AM 8 BUSINESS RECORD, THE WITNESS ON THE STAND MUST BE REQUIRED TO  
11:46AM 9 LAY THE BUSINESS RECORD FOUNDATION, I FAIL THAT TEST AND THE  
11:47AM 10 COURT SHOULD EXCLUDE THIS EMAIL.

11:47AM 11 THAT'S NOT THE TEST, THOUGH. THAT IS A DISTINCTION  
11:47AM 12 WITHOUT A DIFFERENCE.

11:47AM 13 THE DEFENSE'S ARGUMENT IS BASED ON THE ABILITY TO  
11:47AM 14 MEANINGFULLY CROSS THE WITNESS ON THE CONTENT OF THIS EMAIL  
11:47AM 15 AND, FRANKLY, IT'S A DISTINCTION WITHOUT A DIFFERENCE THAT  
11:47AM 16 ADAM ROSENDORFF WORKED AT THERANOS AND, THEREFORE, AN EMAIL  
11:47AM 17 SENT AMONG OTHER INDIVIDUALS STILL GAVE HIM THE OPPORTUNITY TO  
11:47AM 18 MEANINGFULLY CROSS OR EXAMINE DR. ROSENDORFF ABOUT THE EMAIL  
11:47AM 19 BECAUSE HE ALSO WORKED AT THERANOS -- NO, IT DOES NOT WORK THAT  
11:47AM 20 WAY.

11:47AM 21 EITHER YOU MEET THE HEARSAY EXCEPTION AND THE EMAIL COMES  
11:47AM 22 IN, OR IT DOESN'T.

11:47AM 23 BUT THE TEST IS NOT WHETHER MEANINGFUL CROSS CAN BE  
11:47AM 24 CONDUCTED BASED UPON WHO'S ON THE STAND.

11:47AM 25 AND I THINK THAT BECAUSE THE COURT HAS HEARD SUFFICIENT



11:47AM 1 EVIDENCE REGARDING THE WAY THERANOS EMAILS WERE USED, AND IN  
11:47AM 2 PARTICULAR FOR ARRANGING VIP BLOOD TESTS, IT CAN ADMIT THE  
11:47AM 3 EMAIL AS A BUSINESS RECORD.

11:48AM 4 IT DOES NOT NEED, EACH TIME THAT AN EMAIL IS PROFFERED,  
11:48AM 5 THE PARTICULAR WITNESS TO RE-LAY THAT BUSINESS RECORD  
11:48AM 6 FOUNDATION BECAUSE WE HAVE THE AUTHENTICITY STIP.

11:48AM 7 THE COURT: YES, THAT'S RIGHT. THERE'S AN  
11:48AM 8 AUTHENTICITY STIP AS TO THIS -- THAT WAS MY NEXT QUESTION --  
11:48AM 9 AND THIS FALLS UNDER THAT STIPULATION THAT THE PARTIES MADE.  
11:48AM 10 THERE'S A BATE STAMP AND THE AUTHENTICITY IS THERE.

11:48AM 11 THE NEXT STEP, I THINK, MR. SCHENK, YOU'RE SAYING IS THAT,  
11:48AM 12 NO, CERTAINLY THIS WITNESS CAN'T LAY A FOUNDATION FOR THIS.  
11:48AM 13 HE'S NOT ALLOWED TO DO THAT.

11:48AM 14 BUT THE COURT SHOULD LOOK AT PRIOR TESTIMONY, PRIOR  
11:48AM 15 SIMILAR TESTIMONY ABOUT SIMILAR EMAILS.

11:48AM 16 AND WHAT IS WRONG WITH THAT PROCESS, MS. ESTRADA? WHY  
11:48AM 17 CAN'T THE COURT DO THAT?

11:48AM 18 MS. ESTRADA: I THINK BECAUSE THIS IS A SLIGHTLY  
11:48AM 19 DIFFERENT EMAIL ALSO FROM THE EMAILS THAT MR. SCHENK HAS  
11:48AM 20 REFERENCED.

11:48AM 21 MR. EDLIN TESTIFIED ABOUT VIP DEMONSTRATIONS THAT TOOK  
11:48AM 22 PLACE AT THERANOS, OR IN SOME CASES HE TALKED ABOUT VIP  
11:49AM 23 DEMONSTRATIONS THAT OCCURRED IN NEW YORK AND CHICAGO.

11:49AM 24 BUT FOR THE MOST PART, HE TALKED ABOUT VIP DEMONSTRATIONS  
11:49AM 25 WHERE A VIP CAME TO THERANOS AND HAD THEIR BLOOD TESTED THERE,

11:49AM 1 OR IN SOME CASES JUST SAW THE TECHNOLOGY BEING DEMONSTRATED.

11:49AM 2 AND THEN THIS EMAIL FROM DR. ROSENDORFF IS RELATED TO  
11:49AM 3 PATIENTS, NON-VIP'S, WHO MAY HAVE GONE TO WALGREENS ON THEIR  
11:49AM 4 OWN.

11:49AM 5 BUT THIS IS SLIGHTLY DIFFERENT. THIS IS A MIXTURE OF SORT  
11:49AM 6 OF THE TWO, A VIP WHO WAS IN COMMUNICATIONS WITH MS. HOLMES  
11:49AM 7 GOING TO WALGREENS AND HAD THEIR -- HAVING THEIR BLOOD TESTED  
11:49AM 8 THERE.

11:49AM 9 AND SO WITH RESPECT TO THIS PARTICULAR EMAIL, I'M NOT  
11:49AM 10 HEARING FROM THE GOVERNMENT WHY THIS SHOULD BE ADMITTED THROUGH  
11:49AM 11 MR. MOSLEY, WHO DOES NOT HAVE PERSONAL KNOWLEDGE.

11:49AM 12 AND IN ADDITION TO THAT, YOUR HONOR, IF THIS EMAIL IS  
11:49AM 13 ADMITTED THROUGH MR. MOSLEY AND NOT THROUGH SOMEONE, SAY,  
11:50AM 14 MR. HOLMES, WHO WAS THE WRITER OF THIS EMAIL WHO HAS THE MOST  
11:50AM 15 PERSONAL KNOWLEDGE ABOUT WHAT TOOK PLACE, IT WOULD SHIFT THE  
11:50AM 16 BURDEN TO THE DEFENSE TO CALL A WITNESS TO PROVIDE CONTEXT, AND  
11:50AM 17 IT WOULD JUST LEAVE THE JURY WITH THIS MISIMPRESSION THAT THIS  
11:50AM 18 OFF-HAND COMMENT FROM MR. HOLMES WAS IMPUTED ON TO MR. BALWANI.

11:50AM 19 THE COURT: WELL, THANK YOU.

11:50AM 20 BUT THERE IS EVIDENCE ABOUT TESTS AND VIP TESTING.

11:50AM 21 AND MR. SCHENK TELLS US THAT THE RECORD SHOWS THAT, THAT  
11:50AM 22 THAT WAS SOMETHING THAT WAS NOT UNCOMMON FOR THE COMPANY TO  
11:50AM 23 ENGAGE IN, AND THIS IS JUST ANOTHER ONE OF THOSE.

11:50AM 24 AND HE SUGGESTS THAT IT SHOULD COME IN AS A BUSINESS  
11:50AM 25 RECORD BECAUSE IT SPEAKS TO THAT, THAT CONTINUED COURSE OF

11:50AM 1  
11:50AM 2  
11:50AM 3  
11:51AM 4  
11:51AM 5  
11:51AM 6  
11:51AM 7  
11:51AM 8  
11:51AM 9  
11:51AM 10  
11:51AM 11  
11:51AM 12  
11:51AM 13  
11:51AM 14  
11:51AM 15  
11:51AM 16  
11:51AM 17  
11:51AM 18  
11:51AM 19  
11:52AM 20  
11:52AM 21  
11:52AM 22  
11:52AM 23  
11:52AM 24  
11:52AM 25

CONDUCT.

SO THERE'S THAT.

AND THEN MR. SCHENK SAYS, AT A MINIMUM, IF IT DOESN'T COME  
IN UNDER 803(6), IT SHOULD COME IN AS TO NOTICE OF YOUR CLIENT.

AND WHAT IS YOUR THOUGHT ON THAT?

MS. ESTRADA: YES, YOUR HONOR.

IF I MAY, JUST ONE MORE THING ABOUT THE BUSINESS RECORD  
EXCEPTION.

THE FOUNDATION HAS TO BE LAID FOR EACH DOCUMENT THROUGH  
EACH WITNESS THAT IT IS PROVIDED, AND MR. MOSLEY SIMPLY WON'T  
BE ABLE TO LAY THAT FOUNDATION.

AND WITH REGARD TO NOTICE TO MR. BALWANI, I THINK THE ONLY  
WAY THAT THIS PARTICULAR EMAIL, THESE WORDS FROM MR. HOLMES,  
FOR THAT TO BE RELEVANT TO NOTICE TO MR. BALWANI, IT HAS TO BE  
OFFERED FOR THE TRUTH OF THE MATTER ASSERTED, THAT, IN FACT,  
THIS IS WHAT OCCURRED DURING THIS VIP DEMO AT WALGREENS WITH  
BDT.

AND SO FOR THIS PLAN THAT MR. HOLMES PUTS FORTH, WITHOUT  
ANY CONTEXT REGARDING WHAT MR. BALWANI'S RESPONSE WAS OR WHAT  
ACTUALLY HAPPENED, BECAUSE MR. MOSLEY WON'T BE ABLE TO TESTIFY  
TO THAT, THAT -- THEN THESE STATEMENTS WOULD BE TAKEN FOR THE  
TRUTH OF THE MATTER ASSERTED, THAT THIS IS WHAT MR. HOLMES  
COMMUNICATED TO MR. BALWANI, THIS IS THE PLAN THAT SHOULD TAKE  
PLACE, AND THAT'S IMPERMISSIBLE.

THE COURT: WELL, IT'S MR. HOLMES SAYING TO

11:52AM 1 MR. BALWANI, HERE'S HOW WE'LL DO THIS, HERE'S OUR THOUGHTS ON  
11:52AM 2 HOW TO DO THIS.

11:52AM 3 SHOULD'N'T THAT COME IN, AT A MINIMUM, FOR NOTICE TO  
11:52AM 4 MR. BALWANI THAT MR. HOLMES, WHO IS IN CHARGE OF THE VIP  
11:52AM 5 TESTINGS, OR WHATEVER, VISITS, WAS PLANNING THIS SCENARIO FOR  
11:52AM 6 THIS PARTICULAR VISIT, AND HE'S REPORTING TO HIS COO?

11:52AM 7 MS. ESTRADA: BUT WITHOUT ANY ABILITY TO  
11:52AM 8 MEANINGFULLY CROSS-EXAMINE THE WITNESS WHO IS THE PROPONENT OF  
11:53AM 9 THIS EXHIBIT AS TO WHETHER OR NOT MR. BALWANI RESPONDED TO THIS  
11:53AM 10 PLAN FROM MR. HOLMES THAT SOUNDS NEFARIOUS, TO DISTRACT THE  
11:53AM 11 VIP'S FROM LOOKING AT THE RECEIPT, WITHOUT ANY ABILITY TO  
11:53AM 12 MEANINGFULLY CROSS-EXAMINE ON THAT, THAT'S PREJUDICIAL. THAT  
11:53AM 13 WOULD LEAVE THE JURY WITH A MISIMPRESSION ABOUT WHAT MAY HAVE  
11:53AM 14 OCCURRED AFTER THIS EMAIL.

11:53AM 15 THE COURT: OKAY.

11:53AM 16 MR. SCHENK.

11:53AM 17 MR. SCHENK: YES. A FEW THOUGHTS, THANK YOU,  
11:53AM 18 YOUR HONOR.

11:53AM 19 FIRST, EVERY EMAIL, BY THAT LOGIC, REQUIRES THE  
11:53AM 20 OPPORTUNITY TO ASK THE WITNESS IF FURTHER EMAILS WERE SENT.  
11:53AM 21 EVERY SINGLE EMAIL SUFFERS FROM THAT SAME CRITIQUE.

11:53AM 22 SECOND, THERE IS NO BURDEN SHIFTING THAT IS OCCURRING  
11:53AM 23 HERE.

11:53AM 24 THE DEFENSE IS FREE TO STAND ON WHETHER THE GOVERNMENT MET  
11:53AM 25 ITS BURDEN, AND IN ORDER TO MEET OUR BURDEN, WE GET TO OFFER

11:53AM 1 ADMISSIBLE RELEVANT EVIDENCE SUCH AS THIS.

11:53AM 2 THE DEFENSE DOES NOT HAVE AN OBLIGATION TO RESPOND TO  
11:53AM 3 THIS, TO EXPLAIN HOW MR. BALWANI FELT ABOUT THIS. NONE OF  
11:54AM 4 THOSE THINGS ARE REQUIRED THROUGH THE ADMISSION OF THIS  
11:54AM 5 DOCUMENT.

11:54AM 6 AGAIN, THE SAME LOGIC WOULD APPLY TO THE TEXT MESSAGES.

11:54AM 7 THE GOVERNMENT, THE COURT HAS SEEN, INTRODUCES TEXT  
11:54AM 8 MESSAGES THROUGH WITNESSES WHO ARE NOT A PART OF THOSE TEXT  
11:54AM 9 MESSAGES, A PREVIOUSLY ADMITTED EXHIBIT, BUT ASKS QUESTIONS OF  
11:54AM 10 WITNESSES WHO WERE NOT A PART OF THAT TEXT MESSAGE.

11:54AM 11 AND BY THAT SAME LOGIC THE DEFENSE JUST PROPOUNDED, THE  
11:54AM 12 GOVERNMENT SHOULD NOT BE ALLOWED TO DO THAT BECAUSE THEY CANNOT  
11:54AM 13 MEANINGFULLY ASK MR. MOSLEY OR MR. JHAVERI WHAT WAS MEANT BY  
11:54AM 14 SOME TEXT MESSAGE THAT THEY WEREN'T A PARTY TO.

11:54AM 15 SO FOLLOW-UP MEANINGFUL CROSS IS NOT THE LITMUS TEST.  
11:54AM 16 IT'S NOT THE MEASURE OF WHETHER THE COURT SHOULD ADMIT A  
11:54AM 17 PARTICULAR DOCUMENT.

11:54AM 18 AND FINALLY, THE COURT IS RIGHT, AT A MINIMUM, THE  
11:54AM 19 DOCUMENT COMES IN BECAUSE IT IS NOTICE TO THE DEFENDANT, AND IT  
11:54AM 20 DOESN'T NEED TO COME IN FOR ITS TRUTH IN ORDER TO ACCOMPLISH  
11:54AM 21 THAT.

11:54AM 22 IN FACT, WE DON'T KNOW WHETHER BDT WENT TO WALGREENS AND  
11:55AM 23 HAD THE TEST.

11:55AM 24 SO EVEN IF THE COURT ADMITTED THIS AS A BUSINESS RECORD,  
11:55AM 25 THE GOVERNMENT COULDN'T MAKE ARGUMENTS WITHOUT FURTHER EVIDENCE

11:55AM 1 THAT THE EVENTS IN THIS EMAIL CAME TO PASS.

11:55AM 2 THE RELEVANCE OF THE EMAIL IS THE FACT THAT THIS IS BEING  
11:55AM 3 DISCUSSED, THAT DECEPTION IS BEING DISCUSSED. THAT'S WHAT IS  
11:55AM 4 RELEVANT, NOT THAT BDT WENT TO WALGREENS AND THAT THEY WERE  
11:55AM 5 THEN DISTRACTED AND THEN HOW DID THEY FEEL ABOUT THAT?

11:55AM 6 THE GOVERNMENT WOULD HAVE TO, I ACKNOWLEDGE, CALL  
11:55AM 7 ADDITIONAL WITNESSES, EVEN IF THE COURT ADMITTED THIS AS A  
11:55AM 8 BUSINESS RECORD. ITS RELEVANCE DOES NOT TURN ON THE COURT  
11:55AM 9 ADMITTING IT FOR THE TRUTH.

11:55AM 10 THERE IS THE NONHEARSAY PURPOSE THAT I JUST ARTICULATED TO  
11:55AM 11 THE COURT.

11:55AM 12 MS. ESTRADA: IF I MAY JUST REMIND THE COURT  
11:55AM 13 BRIEFLY?

11:55AM 14 THIS EMAIL WAS ACTUALLY THE SUBJECT OF A SIMILAR COLLOQUY  
11:55AM 15 DURING THE HOLMES TRIAL, DURING THE REDIRECT EXAMINATION OF  
11:56AM 16 MS. PETERSON.

11:56AM 17 AND I MENTION THAT BOTH TO JUST REMIND THE COURT THAT THE  
11:56AM 18 COURT ACTUALLY DID EXCLUDE THIS EXHIBIT FOR SIMILAR REASONS TO  
11:56AM 19 WHAT I'M RAISING, BUT IN ADDITION TO THAT -- AND OF COURSE THE  
11:56AM 20 GOVERNMENT MAY OR MAY NOT MAKE THIS SAME ARGUMENT -- BUT WHAT  
11:56AM 21 IS TROUBLING ABOUT THIS EMAIL IS THAT THE GOVERNMENT MIGHT USE  
11:56AM 22 THIS EMAIL TO ARGUE TO THE JURY THAT BECAUSE THIS NEFARIOUS ACT  
11:56AM 23 WAS TAKING PLACE AT BLOOD TESTING OCCURRING WITH BDT, IT MUST  
11:56AM 24 HAVE BEEN TAKING PLACE WITH OTHER INVESTORS.

11:56AM 25 AND IF THAT IS HOW THEY INTEND TO USE IT WITH, FOR

11:56AM 1 EXAMPLE, MR. MOSLEY, WHO WAS AN INVESTOR WHO DID RECEIVE BLOOD  
11:56AM 2 TESTING AT WALGREENS, THEN THAT IS SUBSTANTIALLY MORE  
11:56AM 3 PREJUDICIAL THAN IT IS PROBATIVE GIVEN THAT WE DON'T HAVE THE  
11:56AM 4 CONTEXT OF THE RESPONSE FROM MR. BALWANI, IF ANY, TO THIS  
11:57AM 5 OFF-HAND COMMENT FROM MR. HOLMES.

11:57AM 6 IN ADDITION TO THAT, I HAVE HEARD MR. SCHENK SAY THAT  
11:57AM 7 EVERY EMAIL WOULD NEED TO HAVE CROSS-EXAMINATION ABOUT WHETHER  
11:57AM 8 THERE WAS A RESPONSE. THAT'S NOT MY ARGUMENT.

11:57AM 9 IT'S SIMPLY THAT WHEN EVIDENCE IS OFFERED THROUGH THE  
11:57AM 10 WITNESS, THAT WITNESS HAS TO HAVE PERSONAL KNOWLEDGE, AT LEAST  
11:57AM 11 A BASELINE PERSONAL KNOWLEDGE.

11:57AM 12 BUT IN THIS CASE MR. MOSLEY IS NOT A THERANOS EMPLOYEE, HE  
11:57AM 13 WAS NOT A PARTY TO THIS CONVERSATION, HE DOESN'T WORK WITH BDT,  
11:57AM 14 HE RECEIVED HIS BLOOD TESTING NINE MONTHS LATER.

11:57AM 15 FINALLY, ONE THING I'LL SAY, YOUR HONOR, IS THAT I THINK  
11:57AM 16 THERE IS A DIFFERENCE BETWEEN WHAT MR. SCHENK SUGGESTS WITH  
11:57AM 17 RESPECT TO THE TEXT MESSAGES. THERE'S A DIFFERENCE BETWEEN  
11:57AM 18 DISCUSSING AN EXHIBIT THAT IS ALREADY IN EVIDENCE WITH THE  
11:57AM 19 WITNESS AND OFFERING TO ADMIT IT THROUGH A WITNESS WHO LACKS  
11:58AM 20 PERSONAL KNOWLEDGE.

11:58AM 21 THE COURT: ALL RIGHT. THANK YOU.

11:58AM 22 MR. SCHENK, I THINK, TOLD US THAT HE WOULD NEED ADDITIONAL  
11:58AM 23 EVIDENCE TO PROVE THAT THIS ACTUALLY HAPPENED, AND THAT ABSENT  
11:58AM 24 THAT, JUST BASED ON HIS STATEMENT, HE WOULDN'T BE ARGUING THAT  
11:58AM 25 UNLESS HE HAD THE EVIDENCE TO SUPPORT THAT.

11:58AM 1 SO I DON'T THINK THAT -- UNLESS THERE'S ADDITIONAL  
11:58AM 2 EVIDENCE, I THINK YOUR CONCERN ABOUT THAT ARGUMENT IS SOMETHING  
11:58AM 3 THAT YOU NEEDN'T BE CONCERNED ABOUT BECAUSE HE'S NOT GOING TO  
11:58AM 4 BE ABLE TO MAKE THAT ARGUMENT UNLESS THE EVIDENCE SUPPORTS IT.

11:58AM 5 MS. ESTRADA: UNDERSTOOD, YOUR HONOR.

11:58AM 6 THE COURT: I DO FIND THAT AT A MINIMUM, THIS SHOULD  
11:58AM 7 COME IN FOR NOTICE.

11:58AM 8 I SEE MR. BALWANI'S NAME ON IT. HE'S IN THE MIDDLE OF THE  
11:58AM 9 EMAIL CHAIN, AND HE'S A RECIPIENT AT THE TOP.

11:58AM 10 AND WHETHER OR NOT THIS HAPPENED, WHETHER OR NOT THIS CAME  
11:58AM 11 TO FRUITION OR WHAT HAD HAPPENED, AT LEAST THE PLAN, THIS PLAN,  
11:58AM 12 THIS OUTLINE WAS EMAILED TO HIM, ACCORDING TO THIS EMAIL, ON  
11:59AM 13 OCTOBER 10TH OF 2014, AND SO IT DOES SHOW THAT HE WAS ON NOTICE  
11:59AM 14 OF AT LEAST MR. HOLMES'S PLAN OF THE BDT VIP PROTOCOL.

11:59AM 15 AND AT A MINIMUM, I'M GOING TO ALLOW IT TO COME IN FOR  
11:59AM 16 THAT PURPOSE, MR. SCHENK.

11:59AM 17 I'M NOT -- I STILL HAVE SOME DISCOMFORT ABOUT --  
11:59AM 18 NOTWITHSTANDING YOUR ARGUMENTS -- ABOUT HAVING IT COME IN AS A  
11:59AM 19 PURE BUSINESS RECORD.

11:59AM 20 AND I THINK I UNDERSTAND, WELL, WE'VE DONE IT BEFORE AND  
11:59AM 21 THERE ARE SIMILAR CIRCUMSTANCES AND THIS SHOULD FALL UNDER THAT  
11:59AM 22 SAME UMBRELLA.

11:59AM 23 I'LL LOOK AT THESE CITES THAT YOU GAVE ME, BUT AT LEAST  
11:59AM 24 FOR NOW, FOR PURPOSES OF NOW, I WILL, OVER THE DEFENDANT'S  
11:59AM 25 OBJECTION, ALLOW THIS TO COME IN FOR NOTICE, NOTICE AS TO



11:59AM 1 MR. BALWANI OF THE ACTIONS TAKEN.

11:59AM 2 AND I UNDERSTAND YOUR ARGUMENT, MS. ESTRADA, THAT THIS

11:59AM 3 WITNESS, OR THE WITNESS WHO TESTIFIES ABOUT THIS, WASN'T HERE

11:59AM 4 AND DIDN'T KNOW ANYTHING ABOUT IT, HE JUST HAPPENS TO HAVE THE

12:00PM 5 GOOD FORTUNE TO BE ON THE STAND TESTIFYING AT THE TIME THAT

12:00PM 6 THIS EMAIL IS GOING TO COME UP. I DO UNDERSTAND THAT.

12:00PM 7 I DO THINK IT HAS VALUE FOR THE NOTICE, OR VALUE, I SHOULD

12:00PM 8 SAY RELEVANCE, FOR THE NOTICE ISSUE.

12:00PM 9 ANY PREJUDICE THAT IT MAY CONTAIN IS NOT UNFAIR PREJUDICE.

12:00PM 10 AND OF COURSE WE HAVE SAID THIS BEFORE SOMEWHAT TONGUE IN

12:00PM 11 CHEEK, BUT WE ALL RECOGNIZE THAT, MORE OFTEN THAN NOT, ANY

12:00PM 12 EVIDENCE THAT COMES FROM THE GOVERNMENT AGAINST THE DEFENDANT

12:00PM 13 IS PREJUDICIAL TO THE DEFENDANT.

12:00PM 14 THE QUESTION IS, IS IT UNFAIR PREJUDICE?

12:00PM 15 AND FOR THE PURPOSES OF NOTICE, THE COURT FINDS THAT THIS

12:00PM 16 IS NOT UNFAIR, UNFAIRLY PREJUDICIAL TO MR. BALWANI.

12:00PM 17 SO I'LL ADMIT IT AT A MINIMUM FOR THE NOTICE PURPOSE, AND

12:00PM 18 THEN I'LL REVIEW THESE OTHER TRANSCRIPT CITES AND SEE IF THAT

12:00PM 19 HELPS ANY FURTHER.

12:00PM 20 MR. SCHENK: THANK YOU.

12:00PM 21 MS. ESTRADA: UNDERSTOOD.

12:01PM 22 I WILL JUST NOTE THAT MY COLLEAGUE, MR. CAZARES, WILL BE

12:01PM 23 CONDUCTING THE CROSS-EXAMINATION, AND WILL LIKELY RERAISE OUR

12:01PM 24 OBJECTIONS, BUT WITH THESE COMMENTS IN MIND.

12:01PM 25 THE COURT: SURE. YOU CAN DO THAT DURING THAT

12:01PM 1 EXAMINATION, OR PRESERVE THEM, WHATEVER YOU WOULD LIKE TO DO.

12:01PM 2 THAT'S FINE.

12:01PM 3 OKAY. WHERE ARE WE NOW? WE'RE FURTHER IN THE DAY THAN WE

12:01PM 4 THOUGHT.

12:01PM 5 DID COUNSEL NEED A COUPLE MORE MINUTES? SHOULD WE TAKE

12:01PM 6 ABOUT ANOTHER FIVE, SEVEN MINUTES, AND THEN WE'LL BRING THE

12:01PM 7 JURY IN?

12:01PM 8 LET ME ASK ABOUT OUR SCHEDULE. I'M ASKING TOO MANY

12:01PM 9 QUESTIONS IN SUCCESSION. I'M SORRY.

12:01PM 10 MY SENSE IS THAT WE'LL FINISH MS. BENNETT IN THE NEXT HOUR

12:01PM 11 OR SO I GUESS.

12:01PM 12 AND THEN WE'LL MOVE ON TO THE GOVERNMENT'S NEXT WITNESS?

12:01PM 13 MR. SCHENK: I WOULD EXPECT THAT WE'LL FINISH

12:01PM 14 MS. BENNETT EVEN SOONER, IN LESS TIME THAN THAT.

12:01PM 15 AND YES, THEN MR. MOSLEY. I ANTICIPATE THE DIRECT FOR

12:01PM 16 MR. MOSLEY BEING ABOUT 90 MINUTES, BETWEEN AN HOUR AND AN HOUR

12:01PM 17 AND A HALF.

12:01PM 18 THE COURT: OKAY.

12:02PM 19 MR. SCHENK: IN THAT WINDOW.

12:02PM 20 THE COURT: GOTCHA.

12:02PM 21 MR. CAZARES: CROSS WILL PROBABLY ROLL INTO

12:02PM 22 TOMORROW.

12:02PM 23 THE COURT: OKAY. GOOD TO KNOW.

12:02PM 24 I THINK WE'RE ENDING AT 4:00 TODAY. I THINK THAT'S WHAT

12:02PM 25 WE'VE ADVERTISED.

12:02PM 1 MR. CAZARES: THAT'S MY EXPECTATION, YOUR HONOR. I  
12:02PM 2 THINK WE'LL ROLL INTO TOMORROW.  
12:02PM 3 THE COURT: GREAT. OKAY. WE'LL TAKE ABOUT ANOTHER  
12:02PM 4 SEVEN MINUTES, AND THEN WE'LL CALL OUR JURY IN.  
12:02PM 5 MR. SCHENK: THANK YOU.  
12:02PM 6 THE COURT: THANK YOU.  
12:02PM 7 (RECESS FROM 12:02 P.M. UNTIL 12:15 P.M.)

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**AFTERNOON SESSION**

(JURY IN AT 12:15 P.M.)

THE COURT: ALL RIGHT. THANK YOU. WE'RE BACK ON  
THE RECORD.

ALL PARTIES PREVIOUSLY PRESENT ARE PRESENT AGAIN.

MS. BENNETT IS ON THE STAND.

LADIES AND GENTLEMEN, THANK YOU FOR THE LONG BREAK. I  
HOPE YOU ENJOYED IT. I NEEDED SOME OF THESE LAWYERS' TIME TO  
HELP ME OUT ON SOME ISSUES.

BUT I THINK WE'RE READY TO GO NOW.

MR. LEACH.

MR. LEACH: WE ARE, YOUR HONOR. THANK YOU.

THE COURT: YES.

BY MR. LEACH:

Q. GOOD AFTERNOON, MS. BENNETT.

WHEN WE BROKE, WE WERE DISCUSSING EXHIBIT 4943.

DO YOU STILL HAVE THAT IN FRONT OF YOU?

A. YES.

Q. OKAY. AND THIS WAS A DOCUMENT THAT WAS PROVIDED TO YOU BY  
THERANOS?

A. YES.

Q. AND YOU BELIEVE THIS WAS DONE SO AT SOME POINT PRIOR TO  
APRIL OF 2016?

A. YES.

Q. AND THIS IS SOMETHING THAT YOU REVIEWED?

12:16PM 1 A. YES.

12:16PM 2 Q. IS THIS SOMETHING THAT YOU REVIEWED FOR THE PURPOSE OF

12:16PM 3 ASSESSING THERANOS'S RESPONSE AND ACTION TO 2567?

12:16PM 4 A. YES.

12:16PM 5 Q. AND DID YOU HAVE CONVERSATIONS WITH ANYBODY WITHIN CMS

12:16PM 6 ABOUT WHAT THERANOS WAS REPORTING TO YOU?

12:16PM 7 A. PROBABLY DISCUSSED IT WITH MR. YAMAMOTO.

12:16PM 8 Q. OKAY. AND IF I COULD DRAW YOUR ATTENTION, PLEASE, TO

12:16PM 9 PAGE 9.

12:16PM 10 DO YOU SEE THE TITLE PATIENT IMPACT ASSESSMENT, TPS 3.5?

12:17PM 11 A. YES.

12:17PM 12 Q. AND BENEATH THAT THERE'S A REFERENCE TO D5403, D5481.

12:17PM 13 THERE ARE OTHER NUMBERS THERE.

12:17PM 14 DO YOU SEE THAT?

12:17PM 15 A. YES.

12:17PM 16 Q. AND ARE THOSE A REFERENCE TO THE D-TAGS WITHIN THE 2567?

12:17PM 17 A. THEY ARE.

12:17PM 18 Q. AND THIS PATIENT IMPACT ASSESSMENT RELATES TO THE EDISON

12:17PM 19 DEVICE THAT YOU REVIEWED AND CONSIDERED?

12:17PM 20 A. YES.

12:17PM 21 Q. AND FURTHER BELOW, DO YOU SEE A PARAGRAPH UNDER PATIENT

12:17PM 22 IMPACT?

12:17PM 23 A. YES.

12:17PM 24 Q. AND IN THAT LAST LINE, DID THERANOS PROVIDE --

12:17PM 25 MR. CAZARES: OBJECTION. HEARSAY.

12:17PM 1 THE COURT: WHY DON'T YOU FINISH THE QUESTION?

12:17PM 2 BY MR. LEACH:

12:17PM 3 Q. DID THERANOS PROVIDE YOU INFORMATION ABOUT WHAT IT

12:17PM 4 PERCEIVED THE POSSIBLE PATIENT IMPACT FOR EDISON 3.5 TEST WAS?

12:17PM 5 A. YES.

12:17PM 6 Q. AND WHAT DID THERANOS TELL YOU?

12:17PM 7 MR. CAZARES: OBJECTION. HEARSAY. 702.

12:17PM 8 THERE IS ALSO A TEMPORAL RELEVANCE ISSUE.

12:18PM 9 THE COURT: I DON'T THINK IT'S 702.

12:18PM 10 BUT ARE YOU OFFERING THIS FOR THE TRUTH?

12:18PM 11 MR. LEACH: I'M NOT OFFERING IT FOR THE TRUTH,

12:18PM 12 YOUR HONOR. I WAS ASKING HER ABOUT THE DOCUMENTS. I THINK

12:18PM 13 IT'S A -- I AM OFFERING THE STATEMENT UNDER 801(D)(2), SO --

12:18PM 14 MR. CAZARES: ALSO FOUNDATION RELATING TO THE

12:18PM 15 SUBSTANCE OF THE DOCUMENT.

12:18PM 16 THE COURT: WELL, I WAS GOING TO ASK YOU TO LAY A

12:18PM 17 LITTLE MORE FOUNDATION FOR THIS, IF YOU WOULD, MR. LEACH, AS TO

12:18PM 18 THIS WITNESS'S KNOWLEDGE.

12:18PM 19 BY MR. LEACH:

12:18PM 20 Q. OKAY. AND IS THIS PATIENT IMPACT ASSESSMENT SOMETHING

12:18PM 21 THAT YOU CONSIDERED AS PART OF YOUR WORK, MS. BENNETT?

12:18PM 22 A. YES.

12:18PM 23 Q. WHEN THERANOS MADE STATEMENTS TO YOU ABOUT WHAT IT

12:18PM 24 PERCEIVED THE PATIENT IMPACT TO BE, DID YOU EVALUATE THAT AND

12:18PM 25 CONSIDER IT IN CONNECTION WITH FOLLOWUP IN CONNECTION WITH THE

12:19PM 1 2567?

12:19PM 2 A. YES.

12:19PM 3 Q. AND IN YOUR 2567 FOR EACH CONDITION OR STANDARD, DO YOU  
12:19PM 4 ALWAYS REPORT IN THAT PART OF THE DOCUMENT WHAT PATIENT IMPACT  
12:19PM 5 WAS?

12:19PM 6 MR. CAZARES: OBJECTION. FOUNDATION. CMS DOESN'T  
12:19PM 7 DO A PATIENT IMPACT REPORT.

12:19PM 8 THE COURT: THIS IS ASKING WHAT SHE DOES IN HER  
12:19PM 9 REPORT?

12:19PM 10 MR. LEACH: YES.

12:19PM 11 THE COURT: OBJECTION IS OVERRULED.

12:19PM 12 YOU CAN ANSWER THE QUESTION.

12:19PM 13 THE WITNESS: WHEN WE RECEIVE A RESPONSE FROM THE  
12:19PM 14 LABORATORY, WE LOOK TO ENSURE THAT THEY HAVE ADDRESSED PATIENT  
12:19PM 15 IMPACT.

12:19PM 16 BY MR. LEACH:

12:19PM 17 Q. OKAY. AND DID YOU DO THAT HERE?

12:19PM 18 A. YES.

12:19PM 19 Q. IN CONNECTION WITH THIS DOCUMENT?

12:19PM 20 A. YES.

12:19PM 21 Q. AND WHAT DID THERANOS TELL YOU IN CONNECTION WITH ANY  
12:19PM 22 POSSIBLE PATIENT IMPACT?

12:19PM 23 MR. CAZARES: OBJECTION. HEARSAY, RELEVANCE,  
12:19PM 24 FOUNDATION, AND THE 702 ISSUE.

12:19PM 25 THE COURT: OVERRULED.

12:19PM 1 YOU CAN ANSWER THE QUESTION.

12:20PM 2 THE WITNESS: THERANOS SAID THAT THE LABORATORY HAD  
12:20PM 3 CONCLUDED THAT THERE IS POSSIBLE PATIENT IMPACT FOR EVERY TEST  
12:20PM 4 REPORTED FROM THE LABORATORY'S TPS 3.5 INSTRUMENT.

12:20PM 5 BY MR. LEACH:

12:20PM 6 Q. GOING BACK TO THE 2567, MS. BENNETT, I'D LIKE TO DRAW YOUR  
12:20PM 7 ATTENTION TO PAGE 46.

12:20PM 8 IF WE COULD DISPLAY.

12:20PM 9 IS THIS THE PORTION OF THE 2567 WHERE YOU DISCUSS YOUR  
12:20PM 10 REVIEW OF THERANOS'S QUALITY CONTROL FOR THE EDISON DEVICE?

12:20PM 11 A. THIS IS WHERE I'M TALKING ABOUT THAT THEY DID NOT HAVE A  
12:21PM 12 SYSTEM THAT TWICE A YEAR EVALUATED AND DEFINED THE RELATIONSHIP  
12:21PM 13 BETWEEN THE EDISON AND THE PREDICATE INSTRUMENT, THE COMMERCIAL  
12:21PM 14 INSTRUMENT.

12:21PM 15 Q. OKAY. AND IF WE CAN NOW GO TO PAGE 54 OF THE EXHIBIT.

12:21PM 16 IS THIS THE PORTION OF THE 2567 WHERE YOU DISCUSS THE  
12:21PM 17 PERCENTAGE OF CV YOU OBSERVED ON EDISON DEVICES WITH RESPECT TO  
12:21PM 18 PARTICULAR ASSAYS THROUGHOUT 2014 AND 2015?

12:21PM 19 A. YES.

12:21PM 20 Q. AND ON PAGE 56 AND 57, DO YOU FURTHER DISCUSS WHAT YOU  
12:21PM 21 OBSERVED WITH RESPECT TO THERANOS'S QUALITY CONTROL FOR THE  
12:21PM 22 EDISON DEVICE IN THE 2014 THROUGH JUNE OF 2015 TIME PERIOD?

12:22PM 23 A. YES.

12:22PM 24 Q. AND WERE THESE ISSUES SYSTEMIC IN YOUR MIND?

12:22PM 25 A. YES.



12:22PM 1 Q. WERE THEY ONE-OFFS?

12:22PM 2 MR. CAZARES: OBJECTION. FOUNDATION.

12:22PM 3 THE COURT: SUSTAINED.

12:22PM 4 MR. LEACH: OKAY.

12:22PM 5 MAY I HAVE A MOMENT, YOUR HONOR?

12:22PM 6 THE COURT: YES.

12:22PM 7 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

12:22PM 8 MR. LEACH: NO FURTHER QUESTIONS, YOUR HONOR.

12:22PM 9 THANK YOU.

12:22PM 10 THANK YOU, MS. BENNETT.

12:22PM 11 THE COURT: RECROSS?

12:22PM 12 MR. CAZARES: YES, YOUR HONOR.

12:22PM 13 **RECROSS-EXAMINATION**

12:22PM 14 BY MR. CAZARES:

12:22PM 15 Q. GOOD AFTERNOON, MS. BENNETT.

12:22PM 16 A. HELLO.

12:22PM 17 Q. MS. BENNETT, YOU WOULD AGREE THAT CMS WAS NOT RESPONSIBLE,

12:22PM 18 IN RELATION TO THERANOS, FOR DETERMINING WHETHER THERE WAS A

12:22PM 19 PATIENT IMPACT FROM ANY IDENTIFIED NONCOMPLIANCE; CORRECT?

12:23PM 20 YOU DID NOT DETERMINE PATIENT IMPACT; CORRECT?

12:23PM 21 A. CORRECT.

12:23PM 22 Q. THE LAB AND THE LAB DIRECTOR HAVE RESPONSIBILITY FOR

12:23PM 23 INVESTIGATING AND DETERMINING PATIENT IMPACT; CORRECT?

12:23PM 24 A. YES.

12:23PM 25 Q. NOW, IN RESPONSE TO SOME QUESTIONS MR. LEACH ASKED YOU

12:23PM 1 ABOUT THOSE AAP DATA AT EXHIBIT 20620, DO YOU RECALL THAT?

12:23PM 2 A. YES.

12:23PM 3 Q. OKAY. AND MR. LEACH ASKED YOU SOME QUESTIONS ABOUT THE  
12:23PM 4 SUBSTANCE OF THOSE REPORTS.

12:23PM 5 DO YOU REMEMBER?

12:23PM 6 A. YES.

12:23PM 7 Q. OKAY. AND YOU HAVE NO EVIDENCE THAT THE DATA IN THE AAP  
12:23PM 8 EXHIBITS THAT YOU WERE ASKED ABOUT HERE IN THIS COURT WERE  
12:23PM 9 WRONG; CORRECT?

12:23PM 10 A. NO.

12:23PM 11 Q. YOU HAVE NO EVIDENCE THAT THERE WAS ANYTHING INACCURATE --  
12:24PM 12 YOU HAVE NO EVIDENCE THAT THE AAP WAS NOT DONE AT THE TIME  
12:24PM 13 PERIOD REFLECTED IN THOSE DOCUMENTS; CORRECT?

12:24PM 14 A. NO.

12:24PM 15 Q. NOW, YOU WERE ASKED SOME QUESTIONS BY MR. LEACH, AGAIN,  
12:24PM 16 ABOUT THE TIMELINESS OF THE REPORTING TO PATIENTS WITH THE  
12:24PM 17 CORRECTED RESULTS RELATING TO PT INR.

12:24PM 18 DO YOU REMEMBER THAT?

12:24PM 19 A. I DO.

12:24PM 20 Q. OKAY. AND THE ISSUE THERE AGAIN WAS THE SEVEN WEEK DELAY  
12:24PM 21 BETWEEN YOUR CONCLUSION OF THE SEPTEMBER VISIT IN 2015, WHICH  
12:24PM 22 WAS SEPTEMBER 23RD, 2015, AND UNTIL MID-NOVEMBER OF 2015;  
12:24PM 23 CORRECT?

12:24PM 24 A. YES.

12:24PM 25 Q. AND, AGAIN, THE PT INR TEST WAS DONE ON AN FDA APPROVED

12:24PM 1 COMMERCIAL DEVICE; CORRECT?

12:24PM 2 A. YES.

12:24PM 3 Q. AND IT'S NOT THERANOS FINGERSTICK TECHNOLOGY; CORRECT?

12:24PM 4 A. CORRECT.

12:24PM 5 Q. AND YOU CITED OTHER LABS FOR NONCOMPLIANCE RELATING TO

12:24PM 6 PT INR; CORRECT?

12:24PM 7 MR. LEACH: OBJECTION. RELEVANCE.

12:25PM 8 THE COURT: I'LL ALLOW IT.

12:25PM 9 YOU CAN ANSWER THAT QUESTION.

12:25PM 10 THE WITNESS: YES, I HAVE CITED OTHER LABS.

12:25PM 11 MR. CAZARES: NO FURTHER QUESTIONS, YOUR HONOR.

12:25PM 12 THE COURT: ANY REDIRECT?

12:25PM 13 MR. LEACH: NO, YOUR HONOR. THANK YOU.

12:25PM 14 THE COURT: MAY THIS WITNESS BE EXCUSED?

12:25PM 15 MR. LEACH: YES.

12:25PM 16 MR. CAZARES: YES, YOUR HONOR.

12:25PM 17 THE COURT: YOU'RE EXCUSED. THANK YOU, MS. BENNETT.

12:25PM 18 THE WITNESS: THANK YOU.

12:25PM 19 THE COURT: DOES THE GOVERNMENT HAVE ANOTHER WITNESS

12:25PM 20 TO CALL?

12:25PM 21 MR. SCHENK: YES, WE DO, YOUR HONOR.

12:25PM 22 THE UNITED STATES CALLS DANIEL MOSLEY.

12:27PM 23 (PAUSE IN PROCEEDINGS.)

12:27PM 24 THE COURT: GOOD AFTERNOON, SIR. IF YOU WOULD COME

12:27PM 25 FORWARD, PLEASE.

12:27PM 1 I'LL ASK YOU TO STAND HERE AND FACE OUR COURTROOM DEPUTY  
12:27PM 2 WHILE YOU RAISE YOUR RIGHT HAND. SHE HAS A QUESTION FOR YOU.

12:27PM 3 **(GOVERNMENT'S WITNESS, DANIEL MOSLEY, WAS SWORN.)**

12:27PM 4 THE WITNESS: I DO.

12:27PM 5 THE CLERK: THANK YOU.

12:27PM 6 THE COURT: PLEASE HAVE A SEAT HERE, SIR. MAKE  
12:27PM 7 YOURSELF COMFORTABLE.

12:27PM 8 FEEL FREE TO ADJUST THE CHAIR AND THE MICROPHONE AS YOU  
12:27PM 9 NEED.

12:27PM 10 AND THERE'S SOME WATER THERE FOR REFRESHMENT SHOULD YOU  
12:27PM 11 NEED IT. HELP YOURSELF.

12:27PM 12 THE WITNESS: THANK YOU.

12:27PM 13 THE COURT: YOU'RE WELCOME.

12:27PM 14 AND WHEN YOU ARE COMFORTABLE, WOULD YOU PLEASE STATE YOUR  
12:27PM 15 NAME AND THEN SPELL IT, PLEASE.

12:27PM 16 THE WITNESS: OKAY. SHOULD I LEAVE MY MASK ON?

12:27PM 17 THE COURT: ARE YOU FULLY VACCINATED?

12:27PM 18 THE WITNESS: I AM.

12:27PM 19 THE COURT: ALL RIGHT. YOU MAY REMOVE IT. THANK  
12:27PM 20 YOU.

12:27PM 21 THE WITNESS: DANIEL LYNN MOSTLY. LAST NAME  
12:28PM 22 M-O-S-L-E-Y.

12:28PM 23 THE COURT: THANK YOU. COUNSEL.

12:28PM 24 MR. SCHENK: THANK YOU VERY MUCH, YOUR HONOR. I  
12:28PM 25 WILL ALSO REMOVE MY MASK.

**DIRECT EXAMINATION**

BY MR. SCHENK:

Q. GOOD AFTERNOON, MR. MOSLEY.

A. GOOD AFTERNOON.

Q. MR. MOSLEY, HAVE YOU HEARD OF A COMPANY CALLED THERANOS?

A. YES, I HAVE.

Q. HOW DID YOU BECOME FAMILIAR WITH THAT COMPANY?

A. I FIRST BECAME FAMILIAR WITH IT FROM SOMEBODY I KNEW,  
DR. KISSINGER, WHO MENTIONED THE NAME OF THE COMPANY TO ME.

Q. AND YOU SAID YOU BECAME FAMILIAR WITH IT WITH AN  
INDIVIDUAL -- I'M SORRY, FROM AN INDIVIDUAL NAMED  
DR. KISSINGER?

A. THAT IS CORRECT.

Q. AND HOW DID YOU KNOW DR. KISSINGER?

A. HE HAD BEEN A LONG-TERM CLIENT OF MINE, A LONG-TERM CLIENT  
AND A FRIEND.

Q. AND WE'LL COVER THIS MORE A LITTLE BIT LATER, BUT DID YOU  
INVEST MONEY IN THERANOS?

A. YES, I DID.

Q. DO YOU KNOW ROUGHLY HOW MUCH?

A. IT WAS ALMOST 6 MILLION. JUST SLIGHTLY UNDER \$6 MILLION.

Q. AND DO YOU KNOW ROUGHLY WHEN?

A. IT WOULD HAVE BEEN IN OCTOBER OF 2014.

Q. THANK YOU.

LET'S GO BACK TO THE CONVERSATION THAT YOU SAID YOU HAD

12:29PM 1 WITH DR. KISSINGER. WAS THAT YOUR FIRST EXPOSURE TO THERANOS?

12:29PM 2 A. YES.

12:29PM 3 Q. AND DID DR. KISSINGER ASK YOU TO DO SOMETHING THAT LED TO

12:29PM 4 YOUR EXPOSURE?

12:29PM 5 A. YES.

12:29PM 6 Q. AND WHAT WAS THAT?

12:29PM 7 A. HE ASKED ME TO SORT OF FAMILIARIZE MYSELF WITH THE COMPANY

12:29PM 8 AND TO GIVE HIM MY VIEWS ON THE COMPANY.

12:29PM 9 Q. WE'LL COVER THAT IN A MOMENT.

12:29PM 10 I THINK YOU TOLD THE JURY THAT DR. KISSINGER WAS A CLIENT;

12:29PM 11 IS THAT RIGHT?

12:29PM 12 A. THAT IS CORRECT.

12:29PM 13 Q. AT THE TIME -- FIRST, COULD YOU GIVE US A YEAR? WHEN WAS

12:29PM 14 THAT?

12:29PM 15 A. THIS WOULD HAVE BEEN IN 2014.

12:29PM 16 Q. WAS THAT BEFORE OR AFTER YOUR INVESTMENT?

12:29PM 17 A. BEFORE.

12:29PM 18 Q. AND WHAT WERE YOU DOING FOR A LIVING IN 2014?

12:29PM 19 A. I WAS PRACTICING LAW.

12:29PM 20 Q. WHERE?

12:29PM 21 A. IN NEW YORK CITY.

12:29PM 22 Q. FOR A -- FOR THE GOVERNMENT? FOR A PRIVATE FIRM? FOR?

12:29PM 23 A. FOR A PRIVATE FIRM.

12:29PM 24 Q. AND WHAT IS THE NAME OF THAT FIRM?

12:29PM 25 A. CRAVATH, SWAINE & MOORE.

12:29PM 1 Q. AND HOW LONG DID YOU WORK AT THE LAW FIRM OF CRAVATH?

12:29PM 2 A. FROM 20 -- 1984 UNTIL 2018.

12:30PM 3 Q. AND WHAT AREAS DID YOU PRACTICE?

12:30PM 4 A. TRUSTS AND ESTATES.

12:30PM 5 Q. AND WAS IT THROUGH YOUR WORK IN THAT AREA THAT YOU MET

12:30PM 6 DR. KISSINGER?

12:30PM 7 A. YES.

12:30PM 8 Q. DO YOU STILL WORK AT CRAVATH?

12:30PM 9 A. NO.

12:30PM 10 Q. ARE YOU EMPLOYED NOW?

12:30PM 11 A. YES.

12:30PM 12 Q. HOW ARE YOU EMPLOYED?

12:30PM 13 A. I WORK FOR A FIRM CALLED BDT & COMPANY.

12:30PM 14 Q. AND WHAT LINE OF WORK IS BDT & COMPANY IN?

12:30PM 15 A. WE'RE A MERCHANT BANK FOR CLOSELY HELD COMPANIES AND

12:30PM 16 FAMILIES.

12:30PM 17 Q. YOU SAID A MERCHANT BANK?

12:30PM 18 A. MERCHANT BANK.

12:30PM 19 Q. AND WHAT DO YOU DO FOR BDT?

12:30PM 20 A. I'M INVOLVED IN THE MANAGEMENT, AND I'M ALSO -- AND I

12:30PM 21 ADVISE CLIENTS IN OUR NETWORK.

12:30PM 22 Q. YOU SAID THAT YOU INVESTED IN 2014 IN THERANOS; IS THAT

12:30PM 23 RIGHT?

12:30PM 24 A. THAT'S CORRECT.

12:30PM 25 Q. WERE YOU LIVING IN NEW YORK CITY AT THE TIME?

12:30PM 1 A. HUH --

12:30PM 2 Q. LET ME REPHRASE. WERE YOU WORKING IN NEW YORK CITY AT THE

12:30PM 3 TIME?

12:30PM 4 A. YES.

12:30PM 5 Q. AND CURRENTLY, WHILE YOU'RE DOING WORK FOR BDT, DO YOU

12:31PM 6 ALSO WORK IN NEW YORK?

12:31PM 7 A. YES.

12:31PM 8 Q. LET'S NOW GO TO THAT PERIOD OF TIME IN 2014 WHERE YOU SAID

12:31PM 9 THAT DR. KISSINGER ASKED YOU TO BECOME MORE FAMILIAR WITH

12:31PM 10 THERANOS.

12:31PM 11 DO YOU HAVE THAT TIME PERIOD IN MIND?

12:31PM 12 A. YES.

12:31PM 13 Q. AND WHAT WAS THE FIRST STEP OR TWO THAT YOU TOOK TO GET

12:31PM 14 FAMILIAR WITH THERANOS?

12:31PM 15 A. HE INTRODUCED ME TO ELIZABETH HOLMES, AND I BEGAN TO HAVE

12:31PM 16 CONVERSATIONS WITH HER.

12:31PM 17 Q. WITH MS. HOLMES?

12:31PM 18 A. CORRECT.

12:31PM 19 MR. SCHENK: YOUR HONOR, MAY I APPROACH?

12:31PM 20 THE COURT: YES.

12:31PM 21 MR. SCHENK: THANK YOU.

12:31PM 22 (HANDING.)

12:32PM 23 Q. MR. MOSLEY, I'VE HANDED YOU TWO BINDERS OF EXHIBITS, AND

12:32PM 24 THEY'RE LABELLED 1 OF 2 AND 2 OF 2.

12:32PM 25 AND I'D LIKE TO START IN THE FIRST BINDER.



12:32PM 1 IF YOU WOULD, PLEASE, TURN TO TAB 4163.

12:32PM 2 AND IF YOU WOULD, LET ME KNOW WHEN YOU ARE THERE?

12:32PM 3 A. I'M THERE.

12:32PM 4 Q. MR. MOSLEY, ARE YOU FAMILIAR WITH THE DOCUMENT LOCATED AT

12:32PM 5 TAB 4163?

12:32PM 6 A. YES, I AM.

12:32PM 7 Q. IS THIS AN EMAIL BETWEEN YOU AND MS. HOLMES IN JULY OF

12:32PM 8 2014?

12:32PM 9 A. IT IS.

12:32PM 10 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4163.

12:32PM 11 MR. CAZARES: NO OBJECTION.

12:32PM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

12:32PM 13 (GOVERNMENT'S EXHIBIT 4163 WAS RECEIVED IN EVIDENCE.)

12:33PM 14 THE COURT: JUST GIVE US A MOMENT HERE.

12:33PM 15 IT'S STILL NOT ON IN THE JURY BOX I THINK.

12:33PM 16 I THINK THE TUBES HAVE WARMED UP, AND I THINK IT'S ON IN

12:33PM 17 THE JURY BOX.

12:33PM 18 MR. SCHENK: THANK YOU, YOUR HONOR.

12:33PM 19 Q. MR. MOSLEY, DO YOU SEE AN EXHIBIT NOW ON THE SCREEN IN

12:33PM 20 FRONT OF YOU?

12:33PM 21 A. I DO.

12:33PM 22 Q. SO FEEL FREE TO USE EITHER THE PAPER COPY OR THE SCREEN,

12:33PM 23 WHICHEVER IS EASIER FOR YOU.

12:33PM 24 THIS EMAIL IS DATED JULY 22ND OF 2014.

12:33PM 25 MY FIRST QUESTION IS, IS THAT RIGHT AROUND THE TIME THAT

12:33PM 1 DR. KISSINGER ASKED YOU TO BEGIN TO BECOME FAMILIAR WITH  
12:33PM 2 THERANOS?

12:33PM 3 A. YES.

12:33PM 4 Q. AND I THINK YOU TOLD THE JURY THAT IN OCTOBER OF 2014 YOU  
12:33PM 5 MADE AN INVESTMENT; IS THAT CORRECT?

12:34PM 6 A. YES.

12:34PM 7 Q. AND SO I'D LIKE TO FOCUS OUR QUESTIONS FOR MUCH OF THE  
12:34PM 8 TIME NOW BETWEEN THESE FEW MONTHS, JULY AND OCTOBER OF 2014, IF  
12:34PM 9 THAT WOULD BE OKAY WITH YOU.

12:34PM 10 IN THIS EMAIL, DO YOU SEE IN THE FIRST LINE IT APPEARS  
12:34PM 11 THAT YOU'RE INFORMING MS. HOLMES THAT IT WAS A PLEASURE  
12:34PM 12 SPEAKING WITH YOU YESTERDAY.

12:34PM 13 DO YOU SEE THAT?

12:34PM 14 A. YES.

12:34PM 15 Q. AND DID YOU, IN FACT, HAVE A PHONE CALL WITH MS. HOLMES ON  
12:34PM 16 OR AROUND THE 21ST OF JULY?

12:34PM 17 A. I DID.

12:34PM 18 Q. YOU ALSO SAY, ONCE YOU RECEIVE THE PRIVATE PLACEMENT  
12:34PM 19 MEMORANDUM, YOU WILL GIVE HER A CALL OR AN EMAIL TO GET A  
12:34PM 20 FURTHER BRIEFING.

12:34PM 21 DO YOU SEE THAT?

12:34PM 22 A. I DO.

12:34PM 23 Q. AND WHAT IS A PRIVATE PLACEMENT MEMORANDUM?

12:34PM 24 A. IT IS A DOCUMENT THAT IS SOMETIMES PREPARED IN CONNECTION  
12:34PM 25 WITH A PRIVATELY HELD COMPANY THAT IS RAISING CAPITAL.

12:34PM 1 Q. IN YOUR DISCUSSIONS THE DAY PRIOR WITH MS. HOLMES, DID YOU  
12:34PM 2 DISCUSS MS. HOLMES SENDING YOU CERTAIN DOCUMENTS?  
12:35PM 3 A. YES.  
12:35PM 4 Q. AND FOR WHAT PURPOSE?  
12:35PM 5 A. FOR THE PURPOSE OF FAMILIARIZING MYSELF WITH THE COMPANY  
12:35PM 6 PURSUANT TO DR. KISSINGER'S REQUEST.  
12:35PM 7 Q. AND AT THIS TIME ON JULY 22ND, 2014, WERE YOU YOURSELF  
12:35PM 8 THINKING OF BECOMING AN INVESTOR IN THERANOS?  
12:35PM 9 A. NO.  
12:35PM 10 Q. SO THE MATERIAL WAS BEING SENT TO YOU SORT OF ON BEHALF OF  
12:35PM 11 THE WORK THAT YOU WERE DOING FOR DR. KISSINGER; IS THAT FAIR?  
12:35PM 12 A. THAT IS CORRECT.  
12:35PM 13 Q. THANK YOU.  
12:35PM 14 AND THEN THE NEXT PARAGRAPH AND BELOW, WE SEE A REFERENCE  
12:35PM 15 TO AN INDIVIDUAL NAMED GREG PENNER.  
12:35PM 16 DO YOU SEE THAT?  
12:35PM 17 A. I DO.  
12:35PM 18 Q. AND IT APPEARS THAT HE'S ROB WALTON'S SON-IN-LAW.  
12:35PM 19 CAN YOU EXPLAIN TO THE JURY WHAT THAT IS DISCUSSING?  
12:35PM 20 A. IT'S DISCUSSING ANOTHER CLIENT OF MINE THAT I THOUGHT SHE  
12:35PM 21 MIGHT LIKE TO TALK TO, ELIZABETH.  
12:35PM 22 Q. I'M SORRY?  
12:35PM 23 A. SORRY.  
12:35PM 24 Q. AND "SHE" IS MS. HOLMES?  
12:35PM 25 A. YEAH.

12:35PM 1 Q. AND WHY DID YOU THINK THAT MS. HOLMES WOULD BE INTERESTED  
12:35PM 2 IN THIS CONNECTION?

12:35PM 3 A. I BELIEVE SHE MENTIONED TO ME ON THE CALL THAT SHE WAS  
12:36PM 4 LOOKING FOR OTHER LARGE INVESTORS.

12:36PM 5 Q. ON THE CALL ON THE 21ST OF JULY, DID YOU DISCUSS WITH  
12:36PM 6 MS. HOLMES THE FACT THAT MS. HOLMES WAS RAISING FUNDS OR  
12:36PM 7 SEEKING INVESTORS FOR THERANOS?

12:36PM 8 A. YES.

12:36PM 9 Q. I'D LIKE TO NOW HAVE YOU TURN TO TAB 4173.  
12:36PM 10 IT SHOULD BE THE NEXT TAB IN YOUR BINDER.  
12:36PM 11 DO YOU RECOGNIZE THE DOCUMENT AT 4173?

12:36PM 12 A. I DO.

12:36PM 13 Q. WHAT IS THIS DOCUMENT?

12:36PM 14 A. IT'S A LETTER FROM ELIZABETH HOLMES TO ME.

12:36PM 15 Q. AND IS IT DATED AUGUST 18TH, 2014?

12:36PM 16 A. IT IS.

12:36PM 17 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4173.

12:36PM 18 MR. CAZARES: OBJECTION. HEARSAY.

12:37PM 19 THE COURT: MR. SCHENK.

12:37PM 20 MR. SCHENK: I COULD LAY ADDITIONAL FOUNDATION.

12:37PM 21 THE COURT: SURE. WHY DON'T YOU?

12:37PM 22 BY MR. SCHENK:

12:37PM 23 Q. MR. MOSLEY, DO YOU RECALL RECEIVING THIS LETTER?

12:37PM 24 A. I DO.

12:37PM 25 Q. AND DID THIS LETTER ACCOMPANY FURTHER DOCUMENTS,

12:37PM 1 ADDITIONAL MATERIALS?

12:37PM 2 A. YES, IT DID.

12:37PM 3 Q. AND WHAT WERE THOSE MATERIALS?

12:37PM 4 A. UM, A LARGE, A LARGE STACK OF PAPERS ABOUT THE COMPANY.

12:37PM 5 Q. AND DID YOU REQUEST THAT MS. HOLMES SEND THIS MATERIAL TO

12:37PM 6 YOU?

12:37PM 7 A. I DON'T KNOW WHETHER I REQUESTED IT OR SHE VOLUNTEERED TO

12:37PM 8 SEND IT.

12:37PM 9 Q. WAS, WAS THIS MATERIAL DISCUSSED ON YOUR PHONE CALL IN

12:37PM 10 JULY WITH MS. HOLMES?

12:37PM 11 A. YES.

12:37PM 12 Q. AND WE SAW AN EMAIL A MOMENT AGO THAT INCLUDED A REFERENCE

12:37PM 13 TO A DOCUMENT CALLED A PRIVATE PLACEMENT MEMORANDUM.

12:37PM 14 DO YOU RECALL THAT?

12:37PM 15 A. I DO.

12:37PM 16 Q. AND WAS THIS LETTER, 4173, A COVER LETTER TO A STACK OF

12:37PM 17 DOCUMENTS, INCLUDING THE PRIVATE PLACEMENT MEMORANDUM?

12:37PM 18 A. IT WAS.

12:38PM 19 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4173.

12:38PM 20 MR. CAZARES: SAME OBJECTION.

12:38PM 21 THE COURT: THE OBJECTION IS OVERRULED.

12:38PM 22 IT'S ADMITTED. IT MAY BE PUBLISHED.

12:38PM 23 (GOVERNMENT'S EXHIBIT 4173 WAS RECEIVED IN EVIDENCE.)

12:38PM 24 MR. SCHENK: THANK YOU.

12:38PM 25 Q. MR. MOSLEY, I FIRST WANT TO ASK YOU ABOUT THE DATE. IT

12:38PM 1 LOOKS LIKE IT WAS SENT ON AUGUST 18TH, 2014.

12:38PM 2 YOU TOLD THE JURY A MOMENT AGO THAT YOU HAD A PHONE CALL

12:38PM 3 WITH MS. HOLMES AROUND THE 21ST OF JULY; IS THAT RIGHT?

12:38PM 4 A. YES.

12:38PM 5 Q. DO YOU RECALL WHETHER YOU DID MUCH WORK ON THERANOS IN

12:38PM 6 THOSE INTERVENING FEW WEEKS, OR DID YOU HAVE THE CALL WITH

12:38PM 7 MS. HOLMES AND THEN A FEW WEEKS LATER YOU RECEIVED THESE

12:38PM 8 DOCUMENTS?

12:38PM 9 A. I BELIEVE I HAD THE CALL AND THEN RECEIVED THESE DOCUMENTS

12:38PM 10 A FEW WEEKS LATER.

12:38PM 11 Q. OKAY. AND NOW I'D LIKE TO ASK YOU ABOUT SOME OF THE

12:38PM 12 CONTENT OF THE LETTER.

12:38PM 13 IN THE FIRST LINE IT SAYS, "DEAR DAN,

12:38PM 14 "IT IS WITH GREAT PLEASURE I WRITE THIS LETTER AND ENCLOSE

12:38PM 15 THIS PACKAGE FOR YOU."

12:38PM 16 DO YOU SEE THAT?

12:38PM 17 A. I DO.

12:38PM 18 Q. ENCLOSED WITH THIS LETTER, DID YOU RECEIVE ADDITIONAL

12:39PM 19 DOCUMENTS?

12:39PM 20 A. I DID.

12:39PM 21 Q. CAN YOU DESCRIBE FOR THE JURY THE VOLUME? WAS IT A LARGE

12:39PM 22 VOLUME OF DOCUMENTS?

12:39PM 23 A. IT WAS A LARGE VOLUME. I THINK IT WAS, YOU KNOW, THREE,

12:39PM 24 FOUR INCHES WORTH AT LEAST.

12:39PM 25 Q. GREAT.

12:39PM 1 IN THE NEXT PARAGRAPH, IT LOOKS LIKE MS. HOLMES WRITES,  
12:39PM 2 "BY WAY OF BACKGROUND," AND THEN IT CONTINUES.

12:39PM 3 DO YOU SEE A DESCRIPTION ABOUT THERANOS IN THAT PARAGRAPH?

12:39PM 4 A. I THINK IT'S ALL ABOUT THERANOS.

12:39PM 5 Q. WHEN YOU HAD SAY THAT, DO YOU MEAN THE WHOLE LETTER?

12:39PM 6 A. WELL, THE WHOLE PARAGRAPH THAT YOU'VE HIGHLIGHTED.

12:39PM 7 Q. YES, SIR, THANK YOU.

12:39PM 8 DO YOU SEE HER WRITING THAT "THERANOS HAS A VERY LONG-TERM  
12:39PM 9 MISSION."

12:39PM 10 THAT'S IN THE THIRD LINE OF THE PARAGRAPH?

12:39PM 11 A. I SEE THAT, YES.

12:39PM 12 Q. AND THEN FURTHER DOWN A COUPLE LINES BELOW THAT IT SAYS,  
12:40PM 13 "WE HAVE BENEFITTED."

12:40PM 14 DO YOU SEE THAT?

12:40PM 15 A. YES.

12:40PM 16 Q. "WE HAVE BENEFITED GREATLY FROM THE ABILITY TO EXECUTE,  
12:40PM 17 KEEP A LASER FOCUS ON OUR OPERATIONS, AND SHIP TRANSFORMATIONAL  
12:40PM 18 AND DISRUPTIVE TECHNOLOGY, AS WE'VE JUST DONE," EXCUSE ME,  
12:40PM 19 "WITHOUT HAVING TO TALK IT UP WITH ANALYSTS OR OTHERS BEFORE  
12:40PM 20 IT'S DONE."

12:40PM 21 DO YOU SEE THAT?

12:40PM 22 A. I DO.

12:40PM 23 Q. AND IN THE NEXT PARAGRAPH, MS. HOLMES WRITES THAT  
12:40PM 24 "THERANOS HAS RAISED OVER \$400 MILLION IN EQUITY CAPITAL."

12:40PM 25 AND THEN IN A SENTENCE -- TWO SENTENCES FURTHER IT

12:40PM 1 CONTINUES, "THERE ARE MANY INDUSTRIES IN WHICH THE COMPANY'S  
12:40PM 2 EXISTING PRODUCTS HAVE THE POTENTIAL TO PLAY A SIGNIFICANT ROLE  
12:40PM 3 LONG TERM, RANGING FROM CHEMICAL AND WATER TESTING TO  
12:40PM 4 ANIMAL/PET AND LIVESTOCK TESTING TO THE REPLACEMENT OF INVASIVE  
12:40PM 5 MEDICAL DIAGNOSTIC PROCEDURES WITH TESTING."

12:41PM 6 DO YOU SEE THAT?

12:41PM 7 A. I DO.

12:41PM 8 Q. WHEN YOU HAD THE PHONE CALL IN JULY WITH MS. HOLMES, DID  
12:41PM 9 YOU TALK ABOUT THE THERANOS TECHNOLOGY, THAT IS, WHAT LINE OF  
12:41PM 10 BUSINESS THERANOS WAS IN?

12:41PM 11 A. WE DID.

12:41PM 12 Q. AND WHAT DID SHE TELL YOU?

12:41PM 13 A. AS I REMEMBER, SHE JUST TOLD ME THAT THE COMPANY WAS  
12:41PM 14 DISRUPTIVE AND IN BLOOD TESTING.

12:41PM 15 Q. AND DID SHE DESCRIBE ANY TECHNOLOGY THAT THERANOS HAD  
12:41PM 16 DEVELOPED?

12:41PM 17 A. NOT IN ANY, NOT IN ANY DETAIL.

12:41PM 18 Q. NOT ON THAT PHONE CALL?

12:41PM 19 A. NOT ON THAT PHONE CALL.

12:41PM 20 Q. OKAY. DID YOU LATER LEARN ABOUT TECHNOLOGY THAT THERANOS  
12:41PM 21 HAD DEVELOPED?

12:41PM 22 A. I DID.

12:41PM 23 Q. AND WHAT WERE THE SOURCES OF THAT INFORMATION?

12:41PM 24 A. LARGELY THE DOCUMENTS THAT ELIZABETH HAD SENT ME AND  
12:41PM 25 SUBSEQUENT PHONE CALLS.



12:41PM 1 Q. AND WHEN YOU SAY "THE DOCUMENTS SHE SENT YOU," DO YOU MEAN  
12:41PM 2 THE ONES THAT WERE ATTACHED TO THIS COVER LETTER THAT YOU AND I  
12:42PM 3 ARE REVIEWING?

12:42PM 4 A. YES.

12:42PM 5 Q. IF YOU NOW GO TO THE NEXT PARAGRAPH, THE ONE THAT BEGINS  
12:42PM 6 "HISTORICALLY."

12:42PM 7 "HISTORICALLY, THERANOS'S WORK WAS FOCUSED ON CONTRACTS  
12:42PM 8 WITH PHARMACEUTICAL AND MILITARY CLIENTS."

12:42PM 9 DO YOU SEE THAT?

12:42PM 10 A. I DO.

12:42PM 11 Q. AND THEN THE NEXT PARAGRAPH, "THERANOS HAS NOT ONLY  
12:42PM 12 REDUCED TO PRACTICE AND PATENTED ITS COMPREHENSIVE  
12:42PM 13 TECHNOLOGICAL AND OPERATIONAL INFRASTRUCTURE OVER THE PAST TEN  
12:42PM 14 YEARS, BUT HAS ALSO HAD REGULATORY CERTIFICATIONS TO OPERATE  
12:42PM 15 COMMERCIALY, INCLUDING AS A CLIA-CERTIFIED LABORATORY (THE  
12:42PM 16 REGULATORY CERTIFICATION FOR LABS) SINCE 2011."

12:42PM 17 DO YOU SEE THAT?

12:42PM 18 A. I DO.

12:42PM 19 Q. AND THEN THE NEXT PARAGRAPH BEGINS, "ONCE THE COMPANY WAS  
12:42PM 20 READY TO LAUNCH ITS COMMERCIAL LABORATORY AND ANNOUNCED ITS  
12:42PM 21 NATIONAL CONTRACT WITH WALGREENS IN FALL OF 2013, THERANOS  
12:42PM 22 BEGAN OPERATING IN THE CONSUMER, PHYSICIAN, AND HOSPITAL  
12:43PM 23 LABORATORY TESTING BUSINESS IN THE U.S., WITH PLANS FOR  
12:43PM 24 INTERNATIONAL EXPANSION."

12:43PM 25 MR. MOSLEY, WHEN YOU WERE DOING THIS WORK IN ABOUT AUGUST

12:43PM 1 OF 2014, WERE YOU AWARE OF THERANOS'S BUSINESS RELATIONSHIP  
12:43PM 2 WITH WALGREENS?

12:43PM 3 A. I WAS.

12:43PM 4 Q. DO YOU REMEMBER HOW YOU BECAME FAMILIAR WITH THAT OR  
12:43PM 5 BECAME AWARE OF IT?

12:43PM 6 A. I BELIEVE I WAS FIRST TOLD IT BY ELIZABETH, TO THE BEST OF  
12:43PM 7 MY RECOLLECTION.

12:43PM 8 Q. THAT'S YOUR RECOLLECTION?

12:43PM 9 A. YES.

12:43PM 10 Q. IF YOU'LL NOW TURN TO THE SECOND PAGE OF THIS EXHIBIT.  
12:43PM 11 DO YOU SEE THE PARAGRAPH THAT BEGINS, "THERANOS HAS  
12:43PM 12 GROWN," THE SECOND ONE DOWN?

12:43PM 13 A. I SEE IT.

12:43PM 14 Q. THE FIRST LINE READS, "THERANOS HAS GROWN FROM CASH FROM  
12:43PM 15 ITS CONTRACTS FOR SOME TIME."

12:43PM 16 WITHIN THE MATERIALS THAT MS. HOLMES SENT YOU, WAS THERE A  
12:43PM 17 DISCUSSION OF THE FINANCIAL STATE OF THERANOS?

12:44PM 18 A. THERE WAS.

12:44PM 19 Q. I'D NOW LIKE TO ASK YOU ABOUT TWO PARAGRAPHS BELOW THAT,  
12:44PM 20 THE ONE THAT BEGINS "THERANOS IS INSTEAD."

12:44PM 21 "THERANOS IS INSTEAD, AS ABOVE, VERY SELECTIVELY AND  
12:44PM 22 METHODICALLY SELECTING THE SHAREHOLDERS IT WISHES TO BE OWNERS  
12:44PM 23 OF THE COMPANY LONG TERM, AND CONSIDERING THEIR PARTICIPATION  
12:44PM 24 IN A FINAL EQUITY TRANSACTION."

12:44PM 25 DO YOU SEE THAT?

12:44PM 1 A. I DO.

12:44PM 2 Q. AND IT USES THE PHRASE "SELECTING THE SHAREHOLDERS."

12:44PM 3 LATER ON WHEN YOU BEGAN TO CONSIDER AN INVESTMENT ON YOUR

12:44PM 4 OWN, DID YOU FEEL THAT THERANOS WAS SELECTING YOU?

12:44PM 5 A. YES.

12:44PM 6 Q. WHAT DO YOU MEAN?

12:44PM 7 A. WELL, BY THAT I MEAN THAT THEY WERE WILLING TO LET ME

12:44PM 8 INVEST, SELECT ME AS ONE OF THEIR INVESTORS, PERMIT ME TO

12:44PM 9 INVEST.

12:44PM 10 Q. I'M CURIOUS ABOUT THE PHRASE "PERMIT YOU" OR "LET YOU" TO

12:45PM 11 INVEST.

12:45PM 12 WHEN YOU -- DO YOU HAVE EXPERIENCE BUYING PUBLICLY TRADED

12:45PM 13 STOCK?

12:45PM 14 A. I DO.

12:45PM 15 Q. AND WHEN YOU DO THAT, DOES THE COMPANY HAVE TO ALLOW YOU

12:45PM 16 TO BUY IT?

12:45PM 17 A. NO.

12:45PM 18 Q. SO EXPLAIN THAT DIFFERENCE. WHY DID YOU FEEL IN THIS

12:45PM 19 INVESTMENT YOU WERE BEING ALLOWED TO, OR LET TO INVEST?

12:45PM 20 A. WELL, WITH A CLOSELY HELD COMPANY, YOU'RE BUYING STOCK IN

12:45PM 21 THIS KIND OF A SITUATION FROM THE COMPANY, AND THE COMPANY

12:45PM 22 COULD EITHER CHOOSE TO SELL IT TO YOU OR NOT SELL IT TO YOU.

12:45PM 23 Q. THANK YOU.

12:45PM 24 IF WE COULD NOW GO TO THE NEXT PARAGRAPH, THE ONE THAT

12:45PM 25 BEGINS "WITH."

12:45PM 1 THE FIRST LINE READS, "WITH THIS LETTER AND AS PROMISED ON  
12:45PM 2 OUR CALL, I WOULD LIKE TO FORMALLY EXTEND TO YOU THE INVITATION  
12:45PM 3 TO PARTICIPATE IN THIS EQUITY TRANSACTION TO WHATEVER EXTENT  
12:45PM 4 YOU ARE INTERESTED."

12:45PM 5 I THINK YOU MENTIONED THAT INITIALLY YOU WERE DOING WORK  
12:45PM 6 FOR DR. KISSINGER, AND AT SOME POINT IT TRANSITIONED TO  
12:45PM 7 EVALUATING AN INVESTMENT OPPORTUNITY FOR YOURSELF.

12:46PM 8 IS THAT CORRECT?

12:46PM 9 A. IT EVOLVED TO BEING BOTH OF THOSE.

12:46PM 10 Q. WAS THERE A CLEAR MOMENT WHEN IT EXPANDED FROM ORIGINALLY  
12:46PM 11 JUST BEING WORK ON BEHALF OF DR. KISSINGER TO ALSO AN  
12:46PM 12 EVALUATION OF A PERSONAL INVESTMENT?

12:46PM 13 A. I DON'T HAVE A CLEAR DATE IN MIND.

12:46PM 14 Q. SO DID IT -- COULD YOU DESCRIBE THAT TO THE JURY, THE  
12:46PM 15 PROCESS OF THE EVOLUTION?

12:46PM 16 A. WELL, IN THE COURSE OF LOOKING AT IT, I THOUGHT IT WAS A  
12:46PM 17 VERY INTERESTING COMPANY AND DEVELOPED A PERSONAL INTEREST IN  
12:46PM 18 THINKING ABOUT IT AS AN INVESTMENT.

12:46PM 19 Q. THANK YOU.

12:46PM 20 NOW I'D LIKE TO ASK YOU ABOUT THE VERY LAST LINE OF THE  
12:46PM 21 LETTER AT THE BOTTOM OF THIS PAGE.

12:46PM 22 DO YOU SEE WHERE MS. HOLMES WRITES, "THE ADDITIONAL  
12:46PM 23 MATERIALS FOCUS ON THE INFRASTRUCTURE THERANOS HAS DEVELOPED  
12:46PM 24 AND INITIAL MARKET OF COMMERCIAL LABORATORY TESTING THAT  
12:46PM 25 THERANOS HAS ENTERED."

12:47PM 1 A. I DO.

12:47PM 2 Q. I'M GOING TO ASK YOU SOME QUESTIONS ABOUT THE MATERIALS

12:47PM 3 THAT MS. HOLMES PROVIDED, BUT GENERALLY SPEAKING, DID YOU THINK

12:47PM 4 THAT THE MATERIALS DESCRIBED THERANOS'S CURRENT CAPABILITIES OR

12:47PM 5 FUTURE ASPIRATIONS?

12:47PM 6 A. I BELIEVED IT DESCRIBED CURRENT CAPABILITIES.

12:47PM 7 Q. WOULD YOU NOW TURN IN THIS SAME BINDER TO EXHIBIT 3387.

12:47PM 8 DO YOU SEE THE EXHIBIT AT 3387?

12:47PM 9 A. I DO.

12:47PM 10 Q. THIS EXHIBIT APPEARS TO BE ABOUT 524 PAGES.

12:47PM 11 DO YOU SEE THAT?

12:47PM 12 A. IT'S VERY LONG.

12:48PM 13 Q. AND AT THE SAME TIME, I'M GOING TO ASK YOU ALSO TO GRAB

12:48PM 14 THAT SECOND BINDER THAT I HANDED TO YOU.

12:48PM 15 IN THAT BINDER YOU'LL FIND EXHIBIT 3392.

12:48PM 16 A. UH-HUH.

12:48PM 17 Q. DO YOU RECOGNIZE 3387 AND 3392?

12:48PM 18 A. I DO.

12:48PM 19 Q. AND WHAT ARE THEY?

12:48PM 20 A. I BELIEVE THEY WERE IN THE PACKAGE OF MATERIALS THAT I WAS

12:48PM 21 SENT BY ELIZABETH HOLMES.

12:48PM 22 Q. THE MATERIALS THAT YOU DESCRIBED AS BEING SEVERAL INCHES A

12:48PM 23 MOMENT AGO?

12:48PM 24 A. THAT'S CORRECT.

12:48PM 25 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 3387

12:48PM 1 AND 3392.

12:48PM 2 MR. CAZARES: OBJECTION.

12:48PM 3 THE COURT: OVERRULED.

12:48PM 4 IT'S ADMITTED. IT MAY BE PUBLISHED.

12:48PM 5 (GOVERNMENT'S EXHIBITS 3387 AND 3392 WERE RECEIVED IN

12:48PM 6 EVIDENCE.)

12:48PM 7 MR. SCHENK: THANK YOU.

12:48PM 8 Q. MR. MOSLEY, LET'S START WITH EXHIBIT 3387. YOU CAN PUT

12:48PM 9 THE OTHER BINDER AWAY FOR A MOMENT.

12:49PM 10 IN 3387, IF YOU COULD TURN TO PAGE 128. AGAIN, IT WILL BE

12:49PM 11 ON THE SCREEN IN FRONT OF YOU OR THE PAPER COPY, WHICHEVER IS

12:49PM 12 EASIER FOR YOU.

12:49PM 13 A. I HAVE IT.

12:49PM 14 Q. DO YOU SEE ON PAGE 128 OF THIS EXHIBIT IT LOOKS LIKE THERE

12:49PM 15 IS SOME UNDERLINING, SOME HANDWRITTEN UNDERLINES?

12:49PM 16 A. I SEE IT.

12:49PM 17 Q. ARE THOSE MARKINGS FAMILIAR TO YOU?

12:49PM 18 A. THEY ARE.

12:49PM 19 Q. AND WHO MADE THOSE, DO YOU KNOW?

12:49PM 20 A. I MADE THOSE UNDERLININGS.

12:49PM 21 Q. AND WHEN DID YOU DO THAT?

12:49PM 22 A. SOME TIME AFTER I RECEIVED THE DOCUMENTS AND WAS READING

12:49PM 23 THE DOCUMENTS.

12:49PM 24 Q. AS YOU WERE REVIEWING THE MATERIALS THAT YOU WERE SENT,

12:49PM 25 YOU WROTE ON THE DOCUMENTS?

12:49PM 1 A. YES.

12:49PM 2 Q. LET'S START WITH PARAGRAPH 2, LIQUIDATION RIGHTS.

12:50PM 3 DO YOU SEE THAT?

12:50PM 4 A. I DO.

12:50PM 5 Q. AND DO YOU HAVE A RECOLLECTION OF LIQUIDATION RIGHTS

12:50PM 6 WITHIN THIS DOCUMENT?

12:50PM 7 A. I DO.

12:50PM 8 Q. AND THIS IS WITHIN A DOCUMENT THAT IS CALLED THE

12:50PM 9 DESIGNATION OF SERIES C-2 PREFERRED STOCK.

12:50PM 10 DO YOU SEE THAT?

12:50PM 11 A. YES.

12:50PM 12 Q. AND WHAT IS THAT? WHAT IS THE DESIGNATION OR THE

12:50PM 13 CERTIFICATE OF DESIGNATION OF C-2 STOCK?

12:50PM 14 A. WELL, IT IS GENERALLY A DOCUMENT THAT IS ADOPTED BY THE

12:50PM 15 BOARD OF DIRECTORS DESIGNATING THE TERMS AND CONDITIONS OF THE

12:50PM 16 NEW CLASS OF STOCK.

12:50PM 17 Q. AND THIS ONE IS CALLED C-2; IS THAT RIGHT?

12:50PM 18 A. THAT'S CORRECT.

12:50PM 19 Q. WHEN YOU EVENTUALLY MADE YOUR INVESTMENT IN THERANOS,

12:50PM 20 WHICH CLASS OF STOCK DID YOU PURCHASE?

12:50PM 21 A. IT WAS C-2 PREFERRED STOCK.

12:50PM 22 Q. AND IT USES THE WORD "PREFERRED."

12:50PM 23 ARE YOU FAMILIAR WITH THAT TERM?

12:50PM 24 A. YES, I AM.

12:50PM 25 Q. AND WHAT DOES THAT TERM MEAN TO YOU?

12:50PM 1 A. IT MEANS THAT IT HAS A PREFERENCE -- IN THE EVENT THE  
12:51PM 2 COMPANY WAS EVER LIQUIDATED, IT HAS A PREFERENCE FOR GETTING  
12:51PM 3 BACK THE MONEY THAT YOU HAD INVESTED BEFORE THE COMMON STOCK.  
12:51PM 4 Q. IS THAT ADVANTAGEOUS?  
12:51PM 5 A. IT IS.  
12:51PM 6 Q. WHY?  
12:51PM 7 A. WELL, BECAUSE IF THERE IS EVER A PROBLEM WITH THE COMPANY,  
12:51PM 8 YOU WOULD GET YOUR MONEY BACK BEFORE SOMEBODY THAT OWNED COMMON  
12:51PM 9 STOCK, SO YOU WOULD COME EARLIER IN THE RETURN OF YOUR CAPITAL.  
12:51PM 10 Q. AND WHEN YOU USE THE WORD "YOU" IN THAT --  
12:51PM 11 A. THE OWNER OF THE C-2. I'M SORRY.  
12:51PM 12 Q. AND BY "OWNER OF THE C-2," DO YOU MEAN THE INVESTORS?  
12:51PM 13 A. THE INVESTORS THAT BOUGHT C-2 SHARES.  
12:51PM 14 Q. GOT IT.  
12:51PM 15 SO NOW THE LIQUIDATION RIGHTS PARAGRAPH, WHY DID YOU FIND  
12:51PM 16 IT NECESSARY TO UNDERLINE INFORMATION IN THIS PARAGRAPH? WHAT  
12:51PM 17 WAS SIGNIFICANT?  
12:51PM 18 A. ONLY THAT IT SAID WHAT I WOULD HAVE EXPECTED IT TO SAY,  
12:52PM 19 WHICH IS THAT THE C-2 SHARES HAD A PREFERENCE OVER ALL COMMON  
12:52PM 20 STOCK AND PREVIOUS CLASSES OF PREFERRED STOCK BEFORE THE C-2.  
12:52PM 21 Q. I SEE. SO THIS IS THE PART OF THE DOCUMENT THAT CONTAINS  
12:52PM 22 WHAT YOU WERE JUST EXPLAINING TO ME, THAT IS, THE PREFERENCE OF  
12:52PM 23 C-2 OVER COMMON?  
12:52PM 24 A. THAT'S CORRECT.  
12:52PM 25 Q. OKAY. IF YOU'LL NOW TURN TO THE NEXT PAGE, PAGE 129.



12:52PM 1 DO YOU SEE SECTION 6, A SECTION CALLED MANDATORY  
12:52PM 2 REDEMPTION?  
12:52PM 3 A. I DO.  
12:52PM 4 Q. IT ALSO APPEARS THAT YOU MADE SOME UNDERLINES IN THIS  
12:52PM 5 PARAGRAPH; IS THAT RIGHT?  
12:52PM 6 A. YES.  
12:52PM 7 Q. WHAT WAS SIGNIFICANT ABOUT THE MANDATORY REDEMPTION  
12:52PM 8 SECTION?  
12:52PM 9 A. IT WAS AN UNUSUAL PROVISION THAT I HAD NEVER SEEN, OR  
12:52PM 10 DIDN'T RECOLLECT THAT I HAD EVER SEEN IN A DOCUMENT LIKE THIS  
12:52PM 11 BEFORE.  
12:52PM 12 Q. AND WHAT WAS UNUSUAL ABOUT IT?  
12:52PM 13 A. IT PROVIDED THAT THE COMPANY COULD DECIDE -- LET ME LOOK  
12:53PM 14 AT THE SPECIFIC WORDING OF IT.  
12:53PM 15 THE COMPANY COULD DECIDE TO REDEEM ANY SHARES OF STOCK  
12:53PM 16 THAT IT WISHED TO REDEEM AT WHATEVER THE BOARD DETERMINED THE  
12:53PM 17 FAIR MARKET VALUE OF THE SHARES TO BE AT THAT TIME.  
12:53PM 18 Q. DID YOU THINK THAT THAT WAS AN ADVANTAGEOUS PROVISION FOR  
12:53PM 19 AN INVESTOR?  
12:53PM 20 A. I THOUGHT IT WAS A DISADVANTAGEOUS PROVISION.  
12:53PM 21 Q. AND AS A RESULT, DID YOU TAKE ANY ACTION WITH REGARD TO  
12:53PM 22 THIS SECTION BEFORE INVESTING?  
12:53PM 23 A. I DID.  
12:53PM 24 Q. AND WHAT WAS THAT?  
12:53PM 25 A. I RAISED THE QUESTION WITH ELIZABETH THAT I DIDN'T

12:53PM 1 UNDERSTAND THE PURPOSE FOR THIS PROVISION, AND I THOUGHT IT WAS  
12:53PM 2 NOT A FAIR PROVISION TO INVESTORS.

12:53PM 3 Q. AND DID, DID THERANOS MAKE SOME ACCOMMODATION FOR YOU?

12:53PM 4 A. IT DID.

12:53PM 5 Q. AND WHAT WAS THAT?

12:53PM 6 A. IT GAVE ME A SHORT COMMITMENT THAT IT WOULD NOT EXERCISE  
12:54PM 7 THIS PROVISION TO EVER BUY BACK STOCK FROM ME AT A PRICE LESS  
12:54PM 8 THAN I PAID FOR THE STOCK.

12:54PM 9 Q. AND WAS THAT COMMITMENT THAT THERANOS MADE LIMITED TO YOU?

12:54PM 10 A. NO, IT WAS NOT.

12:54PM 11 Q. WHO ALSO RECEIVED THAT BENEFIT?

12:54PM 12 A. IT SAID BROADLY THAT ANY OF MY CLIENTS THAT HAD ALSO  
12:54PM 13 INVESTED WOULD HAVE THE BENEFIT OF THAT SAME COMMITMENT.

12:54PM 14 Q. AND DID YOU ASK FOR THE EXPANSION OF THAT COMMITMENT  
12:54PM 15 BEYOND JUST YOU TO INCLUDE YOUR CLIENTS?

12:54PM 16 A. I DID.

12:54PM 17 Q. WHY?

12:54PM 18 A. WELL, AS A LAWYER, YOU HAVE A FIDUCIARY OBLIGATION TO ALL  
12:54PM 19 OF YOUR CLIENTS.

12:54PM 20 AND KNOWING THAT SOME OF MY CLIENTS WERE LOOKING AT IT AS  
12:54PM 21 A POSSIBLE INVESTMENT, I WOULD NEVER HAVE BEEN COMFORTABLE  
12:54PM 22 SECURING SOME PROVISION THAT WAS FAVORABLE TO ME WITHOUT  
12:54PM 23 SECURING IT FOR THEM AS WELL.

12:54PM 24 Q. YOU SAID "KNOWING THAT SOME OF YOUR CLIENTS WERE LOOKING  
12:54PM 25 AT INVESTING."

12:54PM 1 WHAT DID YOU MEAN BY THAT?

12:54PM 2 A. WELL, I KNEW THAT SOME OF MY CLIENTS WERE THINKING --  
12:54PM 3 LOOKING AND DOING THEIR OWN DUE DILIGENCE AND THINKING ABOUT  
12:55PM 4 INVESTING IN THE COMPANY.

12:55PM 5 Q. WAS THAT A REFERENCE TO INDIVIDUALS BEYOND DR. KISSINGER?  
12:55PM 6 WAS THIS OTHER CLIENTS THAT YOU'RE TALKING ABOUT?

12:55PM 7 A. IT WAS OTHER CLIENTS.

12:55PM 8 Q. AND WHAT WAS YOUR ROLE, IF ANY, IN THESE OTHER CLIENTS'  
12:55PM 9 INTEREST OR DECISIONS REGARDING INVESTING IN THERANOS?

12:55PM 10 A. WELL, SOME OF THEM MET ME -- MET HER THROUGH ME, BUT THAT  
12:55PM 11 WAS THE EXTENT OF MY ROLE WAS AN INTRODUCTION OR -- EITHER AT  
12:55PM 12 THEIR REQUEST OR AT MY SUGGESTION.

12:55PM 13 Q. AND WHEN YOU SAID "HER," DO YOU MEAN MS. HOLMES?

12:55PM 14 A. YES.

12:55PM 15 Q. DID YOU ENCOURAGE THESE INDIVIDUALS, THESE CLIENTS, TO  
12:55PM 16 INVEST IN THERANOS?

12:55PM 17 A. NO.

12:55PM 18 Q. WOULD YOU NOW TURN TO PAGE 144 OF THIS EXHIBIT.

12:55PM 19 SIR, ARE WE LOOKING AT SOME HANDWRITTEN NOTES NOW?

12:55PM 20 A. YES.

12:55PM 21 Q. AND DO YOU RECOGNIZE THE HANDWRITING?

12:56PM 22 A. I DO.

12:56PM 23 Q. AND WHOSE HANDWRITING IS IT?

12:56PM 24 A. IT'S MY HANDWRITING.

12:56PM 25 Q. AND IF WE COULD ZOOM IN ON IT.

12:56PM 1 I GUESS WHAT I'LL FIRST ASK YOU TO DO, IF YOU CAN, JUST  
12:56PM 2 READ THE ENTIRE DOCUMENT TO THE JURY.

12:56PM 3 A. OKAY.

12:56PM 4 NUMBER 1. "PENETRATION ASSUMED IN 2015 NUMBERS."

12:56PM 5 BELOW THAT, DASH, "FIRST LOCATION IN PALO ALTO IN 2012."

12:56PM 6 BELOW THAT, DASH, "NOW."

12:56PM 7 BELOW THAT, DASH, "PARTNERSHIP WITH WALGREENS FALL 2013."

12:56PM 8 BELOW THAT, DASH, "NOW IN 30 WALGREENS, 29 IN ARIZONA AND  
12:56PM 9 1 IN PALO ALTO."

12:56PM 10 BELOW THAT, DASH, "WELL 11,000 STORE IN 10 COUNTRIES."

12:56PM 11 BELOW THAT, DASH, "COLLABORATIONS WITH 3 HOSPITAL GROUPS  
12:57PM 12 AS REFERENCE LABS."

12:57PM 13 AND THEN IN QUOTES, "MASSIVE UNDERTAKING," END QUOTE.

12:57PM 14 Q. ARE THESE SOME NOTES THAT YOU TOOK?

12:57PM 15 A. THEY ARE.

12:57PM 16 Q. AND NOTES FROM WHAT?

12:57PM 17 A. I BELIEVE THEY WERE BASED ON A TELEPHONE CONVERSATION WITH  
12:57PM 18 ELIZABETH HOLMES.

12:57PM 19 Q. AND WOULD THIS HAVE BEEN A CONVERSATION AFTER THE  
12:57PM 20 JULY 21ST CONVERSATION THAT YOU AND I SPOKE ABOUT?

12:57PM 21 A. THAT IS CORRECT.

12:57PM 22 Q. DO YOU KNOW IF THIS CONVERSATION WOULD HAVE OCCURRED AFTER  
12:57PM 23 YOU HAD RECEIVED THIS BINDER OF MATERIALS?

12:57PM 24 A. IT WAS AFTER.

12:57PM 25 Q. AND HOW DO YOU KNOW THAT?

12:57PM 1 A. AMONG OTHER THINGS, I THINK IT WAS WRITTEN ON ONE OF THE  
12:57PM 2 PAGES THAT WAS PART OF THE PACKAGE.

12:57PM 3 Q. SO YOU THINK YOU RECEIVED THE BINDER, AND THEN HAD ANOTHER  
12:57PM 4 CALL WITH MS. HOLMES AND WROTE NOTES IN THE BINDER?

12:57PM 5 A. I THINK THAT IS CORRECT.

12:57PM 6 Q. IN NUMBER 1 YOU SAID THAT THAT READ, "PENETRATION ASSUMED  
12:58PM 7 IN 2015 NUMBERS."

12:58PM 8 IS THAT CORRECT?

12:58PM 9 A. THAT'S CORRECT.

12:58PM 10 Q. AND DO YOU KNOW WHAT THAT MEANT?

12:58PM 11 A. IT WAS REFERRING TO THE THERANOS LABS THAT WERE LOCATED IN  
12:58PM 12 THE WALGREENS DRUG STORES.

12:58PM 13 Q. AND WHEN YOU SAY "IT WAS REFERRING TO," I'M SORRY, WHAT DO  
12:58PM 14 YOU MEAN?

12:58PM 15 A. WELL, THE SENTENCE SAYS, "PENETRATION."

12:58PM 16 I WAS REFERRING TO WHAT EXTENT, TO WHAT NUMBERS OF  
12:58PM 17 WALGREENS STORES WERE THERE THERANOS FACILITIES LOCATED IN.

12:58PM 18 Q. I SEE.

12:58PM 19 IT WAS SIGNIFICANT -- THE NUMBER OF THERANOS STORES  
12:58PM 20 LOCATED WITHIN A WALGREENS WAS A SIGNIFICANT NUMBER; IS THAT  
12:58PM 21 RIGHT?

12:58PM 22 A. YES.

12:58PM 23 Q. DO YOU KNOW WHAT IT WAS SIGNIFICANT TO, OR WHAT INFLUENCE  
12:58PM 24 IT HAD ON OTHER INFORMATION?

12:58PM 25 A. WELL, IT WOULD HAVE IMPACTED THE LEVEL OF REVENUE.

12:58PM 1 Q. I SEE.

12:58PM 2 AND DID YOU LEARN THAT INFORMATION ON THIS PHONE CALL WITH

12:59PM 3 MS. HOLMES?

12:59PM 4 A. I BELIEVE I DID, AND IT MIGHT HAVE BEEN ALSO THE CALL AND

12:59PM 5 THE ADDITIONAL MATERIALS.

12:59PM 6 Q. THANK YOU.

12:59PM 7 IF YOU'LL NOW TURN TO PAGE 275 OF THIS EXHIBIT.

12:59PM 8 DO YOU SEE THE FIRST PARAGRAPH IN THIS DOCUMENT THAT

12:59PM 9 READS, "HEADQUARTERED IN PALO ALTO, THERANOS IS A CONSUMER

12:59PM 10 HEALTH CARE TECHNOLOGY COMPANY. THERANOS'S CLINICAL LABORATORY

12:59PM 11 OFFERS COMPREHENSIVE LABORATORY TESTS FROM SAMPLES AS SMALL AS

12:59PM 12 A FEW DROPS OF BLOOD AT UNPRECEDENTED LOW PRICES."

12:59PM 13 DO YOU SEE THAT?

12:59PM 14 A. I DO.

12:59PM 15 Q. AND DID YOU RECEIVE THIS ALSO BEFORE MAKING A DECISION TO

01:00PM 16 INVEST?

01:00PM 17 A. I DID.

01:00PM 18 Q. THE REFERENCE THERE TO THERANOS'S CLINICAL LAB OFFERING

01:00PM 19 COMPREHENSIVE LAB TESTS, WAS THAT CONSISTENT WITH YOUR

01:00PM 20 UNDERSTANDING OF THE CURRENT CAPABILITIES OF THERANOS'S

01:00PM 21 TECHNOLOGY?

01:00PM 22 A. IT WAS.

01:00PM 23 Q. WOULD YOU NOW TURN TO PAGE 278.

01:00PM 24 THE NEXT SEVERAL SLIDES THAT I'M GOING TO DISCUSS WITH YOU

01:00PM 25 LOOK LIKE, LOOK LIKE SLIDES OR POWERPOINT SLIDES.

01:00PM 1 DO YOU RECALL THESE?

01:00PM 2 A. I DO.

01:00PM 3 Q. AND WAS THE CONTENT OF THESE SLIDES ALSO IMPORTANT IN YOUR

01:00PM 4 EVENTUAL DECISION TO INVEST?

01:00PM 5 A. THEY WERE.

01:00PM 6 Q. IF YOU'LL TURN TO THE NEXT PAGE, PAGE 279, THERE'S AN

01:00PM 7 IMAGE OF A CHILD AND THE PHRASE "GOODBYE, BIG BAD NEEDLE."

01:01PM 8 DO YOU SEE THAT?

01:01PM 9 A. NOT ON WHAT IS MY -- OH, MAYBE I'M ON THE WRONG PAGE.

01:01PM 10 HOLD IT. I MAY BE -- I WAS LOOKING AT THE WRONG PAGE. I WAS

01:01PM 11 LOOKING AT ANOTHER STAMP OF NUMBERS ON THE BOTTOM OF THE PAGE.

01:01PM 12 Q. I'M SORRY. THE BOTTOM MIDDLE?

01:01PM 13 A. YES.

01:01PM 14 Q. IT SHOULD SAY PAGE -- THREE LEAD ZEROS AND THEN 279.

01:01PM 15 A. I HAVE IT NOW.

01:01PM 16 Q. SO ON THIS PAGE, DO YOU SEE THE PHRASE "GOODBYE, BIG BAD

01:01PM 17 NEEDLE"?

01:01PM 18 A. I SEE IT.

01:01PM 19 Q. AND DID YOU UNDERSTAND WHAT THAT MEANS? DID YOU

01:01PM 20 UNDERSTAND WHAT THAT WAS A REFERENCE TO?

01:01PM 21 A. I DID.

01:01PM 22 Q. AND WHAT DID THAT MEAN?

01:01PM 23 A. TO ME IT MEANT IT WAS GOING TO BE TAKING BLOOD SAMPLES BY

01:01PM 24 A FINGERPRICK AND, THEREFORE, WOULD NOT NEED A BIG NEEDLE TO

01:01PM 25 DRAW BLOOD FROM A VEIN.

01:01PM 1 Q. AND WAS THAT YOUR UNDERSTANDING BEFORE INVESTING IN  
01:02PM 2 THERANOS?

01:02PM 3 A. IT WAS.

01:02PM 4 Q. WOULD YOU NOW TURN TO THE NEXT PAGE, PAGE 280.

01:02PM 5 ON THIS SLIDE, THE FIRST INTENDED PARAGRAPH READS,  
01:02PM 6 "THERANOS'S PROPRIETARY, PATENTED TECHNOLOGY RUNS COMPREHENSIVE  
01:02PM 7 BLOOD TESTS FROM A FINGERSTICK AND TESTS FROM MICRO-SAMPLES OF  
01:02PM 8 OTHER MATRICES AND GENERATES SIGNIFICANTLY HIGHER INTEGRITY  
01:02PM 9 DATA THAN CURRENTLY POSSIBLE."

01:02PM 10 DO YOU SEE THAT?

01:02PM 11 A. I DO.

01:02PM 12 Q. AND WAS THAT REPRESENTATION SIGNIFICANT TO YOU WHEN YOU  
01:02PM 13 MADE A DECISION TO INVEST?

01:02PM 14 A. IT WAS.

01:02PM 15 Q. WHY?

01:02PM 16 A. WELL, THAT WAS -- AS IT SAYS, I UNDERSTAND IT TO BE  
01:02PM 17 PROPRIETARY, I UNDERSTOOD IT TO BE PATENTED, AND THAT WAS AN  
01:02PM 18 IMPORTANT DEVELOPMENT.

01:02PM 19 Q. AND DID YOU, DID YOU BELIEVE THAT YOU WERE INVESTING IN A  
01:02PM 20 COMPANY THAT RAN BLOOD TESTS?

01:02PM 21 A. I DID.

01:02PM 22 Q. DID YOU BELIEVE THAT YOU WERE INVESTING IN A COMPANY THAT  
01:03PM 23 RAN BLOOD TESTS USING ITS OWN DEVICES OR USING DEVICES THAT IT  
01:03PM 24 PURCHASED FROM THIRD PARTY MANUFACTURERS?

01:03PM 25 A. USING ITS OWN DEVICES.



01:03PM 1 Q. AND WAS THIS SENTENCE THAT I JUST READ TO YOU AT LEAST ONE  
01:03PM 2 OF THE SOURCES WHERE YOU REACHED THAT CONCLUSION?

01:03PM 3 A. YES.

01:03PM 4 Q. IF YOU WILL LOOK NOW AT THE NEXT LINE, "THERANOS IS THE  
01:03PM 5 WORLD'S FIRST AND ONLY CLIA-CERTIFIED LABORATORY RUNNING ITS  
01:03PM 6 TESTS ON MICRO-SAMPLES."

01:03PM 7 A. I SEE THAT.

01:03PM 8 Q. YOU SEE THAT?

01:03PM 9 AND WAS THAT REPRESENTATION SIGNIFICANT IN YOUR DECISION  
01:03PM 10 TO INVEST?

01:03PM 11 A. IT WAS.

01:03PM 12 Q. WHY?

01:03PM 13 A. WELL, IT INDICATED THAT THE LABORATORY HAD BEEN CERTIFIED  
01:03PM 14 AND THAT IT WAS RUNNING TESTS ON MICRO SAMPLES.

01:03PM 15 Q. THE NEXT PARAGRAPH READS, "CURRENT AND PAST CLIENTS  
01:03PM 16 INCLUDE 10 OF THE TOP 15 MAJOR PHARMACEUTICAL COMPANIES,  
01:03PM 17 MIDSIZED BIO-PHARMAS, PROMINENT RESEARCH INSTITUTIONS, HEALTH  
01:04PM 18 CARE PAYORS, AND U.S. AND FOREIGN GOVERNMENT HEALTH AND  
01:04PM 19 MILITARY ORGANIZATIONS."

01:04PM 20 I WANT TO ASK YOU IN PARTICULAR ABOUT THAT FIRST PART, "10  
01:04PM 21 OF THE TOP 15 MAJOR PHARMACEUTICAL COMPANIES."

01:04PM 22 A. UH-HUH.

01:04PM 23 Q. WAS THAT REPRESENTATION SIGNIFICANT TO YOU IN YOUR  
01:04PM 24 DECISION TO INVEST?

01:04PM 25 A. YES.

01:04PM 1 Q. WHY?

01:04PM 2 A. WELL, BECAUSE THE PHARMACEUTICAL COMPANIES ARE LARGE --

01:04PM 3 THE TOP 15 OR TOP 10 WERE VERY LARGE COMPANIES THAT WERE VERY

01:04PM 4 SOPHISTICATED.

01:04PM 5 Q. IN FACT, DID YOU AT SOME POINT REVIEW A REPORT FROM A

01:04PM 6 COMPANY CALLED PFIZER?

01:04PM 7 A. YES, I DID.

01:04PM 8 Q. AND WAS THAT PARTICULAR REPORT SIGNIFICANT TO YOU?

01:04PM 9 A. IT WAS.

01:04PM 10 Q. WHY?

01:04PM 11 A. WELL, IT WAS A VERY DETAILED, LONG REPORT ABOUT THE USE OF

01:04PM 12 THE EQUIPMENT, AND IT WAS HIGHLY COMPLIMENTARY.

01:04PM 13 Q. IF YOU'LL NOW TURN TO PAGE 85, I'M SORRY, 285.

01:05PM 14 DO YOU SEE THE SLIDE ENTITLED VALIDATION OF THERANOS

01:05PM 15 TESTS?

01:05PM 16 A. I SEE IT.

01:05PM 17 Q. THE FIRST PARAGRAPH READS, "THERANOS HAS BEEN

01:05PM 18 COMPREHENSIVELY VALIDATED OVER THE COURSE OF THE LAST SEVEN

01:05PM 19 YEARS BY TEN OF THE FIFTEEN LARGEST PHARMACEUTICAL COMPANIES,

01:05PM 20 WITH HUNDREDS OF THOUSANDS OF ASSAYS PROCESSED."

01:05PM 21 DO YOU SEE THAT LINE?

01:05PM 22 A. I DO.

01:05PM 23 Q. WAS THAT REPRESENTATION SIGNIFICANT IN YOUR DECISION TO

01:05PM 24 INVEST?

01:05PM 25 A. IT WAS.

01:05PM 1 Q. WHY?

01:05PM 2 A. BECAUSE IT WAS REFERRING TO PHARMACEUTICAL COMPANIES WHICH

01:05PM 3 WERE INDICATED TO BE HIGHLY SOPHISTICATED, AND IT WAS

01:05PM 4 INDICATING THAT, ONCE AGAIN, 10 OF THE 15 LARGEST

01:05PM 5 PHARMACEUTICAL COMPANIES HAD WORKED WITH THERANOS AND IT

01:05PM 6 INVOLVES HUNDREDS OF THOUSANDS OF ASSAYS.

01:05PM 7 Q. AND FURTHER DOWN, DO YOU SEE THE IMAGE OR THE LOGO FROM

01:06PM 8 JOHNS HOPKINS MEDICINE?

01:06PM 9 A. I DO.

01:06PM 10 Q. DID YOU THINK THAT JOHNS HOPKINS HAD VALIDATED THERANOS

01:06PM 11 TESTS?

01:06PM 12 A. YES.

01:06PM 13 Q. IF YOU'LL NOW TURN TO PAGE 299.

01:06PM 14 A. OKAY.

01:06PM 15 Q. ON 299, DO YOU SEE WHERE IT SAYS "SAME TESTS, A WHOLE NEW

01:06PM 16 APPROACH"?

01:06PM 17 A. I DO.

01:06PM 18 Q. AND BELOW THAT, "THE ACTIONABLE INFORMATION YOU NEED,

01:06PM 19 1/1,000 THE SIZE OF A TYPICAL BLOOD DRAW?"

01:07PM 20 DO YOU SEE THAT?

01:07PM 21 A. I DO.

01:07PM 22 Q. AND IT APPEARS THERE ARE THREE IMAGES BELOW THAT ON THE

01:07PM 23 SLIDE.

01:07PM 24 DO YOU SEE THAT?

01:07PM 25 A. I DO.

01:07PM 1 Q. AND THEN, "THERANOS RUNS ANY TEST AVAILABLE IN CENTRAL  
01:07PM 2 LABORATORIES, AND PROCESSES ALL SAMPLE TYPES."

01:07PM 3 AND THEN AT THE VERY END IT READS, "THERANOS PROVIDES THE  
01:07PM 4 HIGHEST LEVEL OF OVERSIGHT, AUTOMATION, AND STANDARDIZATION IN  
01:07PM 5 OUR PRE AND POST-ANALYTIC PROCESSES, ENSURING THE HIGHEST  
01:07PM 6 LEVELS OF ACCURACY AND PRECISION."

01:07PM 7 AGAIN, MR. MOSLEY, DID YOU RECEIVE THIS SLIDE BEFORE  
01:07PM 8 INVESTING?

01:07PM 9 A. YES, I DID.

01:07PM 10 Q. WAS THIS SIGNIFICANT IN YOUR DECISION TO INVEST?

01:07PM 11 A. IT WAS.

01:07PM 12 Q. WHY?

01:07PM 13 A. WELL, BECAUSE IT PROVIDED THAT THEY CAN RUN ALL OF THE  
01:07PM 14 TESTS, RUN IT WITH A SMALL SAMPLE SIZE, AND AS IT SAYS, IT SAYS  
01:07PM 15 THAT OVERSIGHT, AUTOMATION AND STANDARDIZATION AND THE HIGHEST  
01:07PM 16 LEVELS OF ACCURACY AND PRECISION?

01:07PM 17 Q. AND I APPRECIATE IT MAY BE OBVIOUS, BUT WHY IS ACCURACY  
01:07PM 18 AND PRECISION IMPORTANT IN YOUR DECISION TO INVEST?

01:07PM 19 A. WELL, YOU KNOW, BLOOD TESTING OBVIOUSLY INVOLVES HUMAN  
01:08PM 20 HEALTH AND ACCURACY IS CRITICAL IN DETERMINING WHETHER, YOU  
01:08PM 21 KNOW, A TEST IS APPROPRIATE AND RELIABLE.

01:08PM 22 Q. AT THE VERY TOP WHERE IT SAYS "SAME TESTS, A WHOLE NEW  
01:08PM 23 APPROACH," WHAT DID THAT MEAN TO YOU IN PARTICULAR, "A WHOLE  
01:08PM 24 NEW APPROACH"?

01:08PM 25 A. MY UNDERSTANDING WAS THAT IT WAS COMPLETELY NEW TECHNOLOGY

01:08PM 1 THAT ALLOWED THIS TO BE DONE WITH SMALL SAMPLE SIZES.

01:08PM 2 Q. THANK YOU.

01:08PM 3 IF YOU'LL NOW TURN TO PAGE 301, TWO PAGES FORWARD.

01:08PM 4 A. OKAY.

01:08PM 5 Q. DO YOU SEE A SLIDE TITLED "A NEW STANDARD IN QUALITY"?

01:08PM 6 A. I DO.

01:08PM 7 Q. AND IT READS, "THE HIGHEST LEVELS OF ACCURACY.

01:08PM 8 "BY SYSTEMATICALLY CONTROLLING AND STANDARDIZING OUR

01:08PM 9 PROCESSES, THERANOS OFFERS TESTS WITH THE HIGHEST LEVELS OF

01:08PM 10 ACCURACY."

01:08PM 11 DO YOU SEE THAT?

01:08PM 12 A. I DO.

01:08PM 13 Q. AND AGAIN, WAS THE ACCURACY OF THERANOS TESTS IMPORTANT IN

01:08PM 14 YOUR DECISION TO INVEST?

01:08PM 15 A. IT WAS.

01:08PM 16 Q. IF YOU'LL TURN NOW TWO PAGES FORWARD AGAIN TO PAGE 303.

01:09PM 17 A. OKAY.

01:09PM 18 Q. DO YOU SEE THE SLIDE TITLED "NEW POSSIBILITIES IN LAB"?

01:09PM 19 A. I DO.

01:09PM 20 Q. AND ON THE LEFT SIDE THE FIRST BULLET READS, "ALL 1,000

01:09PM 21 PLUS CURRENTLY RUN TESTS/CPT CODES ARE AVAILABLE THROUGH

01:09PM 22 THERANOS."

01:09PM 23 AND THE SECOND BULLET READS, "THERANOS RUNS ANY TEST

01:09PM 24 AVAILABLE IN CENTRAL LABORATORIES."

01:09PM 25 WAS THE VOLUME OF TESTS THAT THERANOS WAS OFFERING, WAS

01:09PM 1 THAT SIGNIFICANT IN YOUR DECISION TO INVEST?

01:09PM 2 A. IT WAS.

01:09PM 3 Q. AND WHY DID THE VOLUME OF TESTS MATTER?

01:09PM 4 A. WELL, BECAUSE IT WOULD -- IF YOU WERE GOING TO HAVE A  
01:09PM 5 TESTING DEVICE, IT WAS IMPORTANT THAT IT COULD RUN THE FULL  
01:09PM 6 RANGE OF TESTS THAT YOU WOULD EXPECT TO BE ABLE TO OBTAIN.

01:09PM 7 Q. THANK YOU.

01:09PM 8 IF YOU'LL NOW TURN TO THE NEXT PAGE, PAGE 304.

01:10PM 9 DO YOU SEE "FASTER RESULTS. FASTER ANSWERS."

01:10PM 10 AND BELOW THAT, "THERANOS'S MICRO-SAMPLE ANALYSIS IS  
01:10PM 11 PERFORMED AT AMAZING SPEED, SO WE CAN REPORT RESULTS FASTER  
01:10PM 12 THAN PREVIOUSLY POSSIBLE."

01:10PM 13 WHAT I'M WONDERING IS WHAT DID "FASTER THAN PREVIOUS  
01:10PM 14 POSSIBLE," THAT COMPARATIVE, WHAT DID THAT MEAN TO YOU?

01:10PM 15 A. TO ME IT MEANT THAT RATHER THAN HAVING A BLOOD DRAW AND  
01:10PM 16 WAITING A DAY OR TWO OR THREE DAYS TO GET BLOOD TESTS, OR  
01:10PM 17 LONGER, THAT YOU WOULD GET THE RESULTS BACK MUCH FASTER.

01:10PM 18 Q. DID YOU THINK THAT THERANOS BLOOD TESTING TECHNOLOGY WAS  
01:10PM 19 THEREFORE ABLE TO GENERATE ITS RESULTS FASTER THAN WHAT WAS  
01:10PM 20 CURRENTLY AVAILABLE IN THE MARKET?

01:10PM 21 A. YES.

01:10PM 22 Q. AND WAS THAT ADVANTAGE IMPORTANT TO YOUR INVESTMENT  
01:11PM 23 DECISION?

01:11PM 24 A. IT WAS.

01:11PM 25 Q. WHY?

01:11PM 1 A. WELL, BECAUSE, YOU KNOW, ANY TECHNOLOGY THAT WOULD ALLOW  
01:11PM 2 SOMETHING TO BE DONE FASTER WOULD MAKE IT HIGHLY DESIRABLE AND  
01:11PM 3 HIGHLY COMMERCIAL.

01:11PM 4 Q. THANK YOU.

01:11PM 5 IF YOU'LL NOW TURN TO PAGE 320.

01:11PM 6 DO YOU SEE THE SLIDE THAT IS ENTITLED "RECENT PRESS"?

01:11PM 7 A. ONE -- PAGE 330 DID YOU SAY?

01:11PM 8 Q. 320.

01:11PM 9 A. 320.

01:11PM 10 Q. OKAY.

01:11PM 11 DO YOU SEE THE SECOND IMAGE DOWN ON THE LEFT THE WORD  
01:11PM 12 "FORTUNE"?

01:11PM 13 A. I DO.

01:11PM 14 Q. AND THEN ACROSS FROM THAT, "THIS CEO IS OUT FOR BLOOD,"  
01:12PM 15 FOLLOWED BY AN IMAGE OF A "FORTUNE" MAGAZINE COVER.

01:12PM 16 DO YOU SEE THAT?

01:12PM 17 A. I DO.

01:12PM 18 Q. AND WHAT DID IT MEAN TO YOU THAT WITHIN THIS PACKAGE  
01:12PM 19 YOU'RE RECEIVING IMAGES FROM MAGAZINES, OR IMAGES FROM THE NAME  
01:12PM 20 OF A PERIODICAL, EVEN A SLIDE CALLED "RECENT PRESS," WHAT DID  
01:12PM 21 THAT MEAN TO YOU?

01:12PM 22 A. WELL, IT MEANT THIS TECHNOLOGY WAS BEING RECOGNIZED BY THE  
01:12PM 23 PRESS.

01:12PM 24 Q. WAS THAT SIGNIFICANT?

01:12PM 25 A. IT WAS.

01:12PM 1 Q. WHY?

01:12PM 2 A. WELL, BECAUSE IT WAS A FURTHER VALIDATION AND GOOD

01:12PM 3 MARKETING.

01:12PM 4 Q. AFTER YOU RECEIVED THIS, DO YOU KNOW WHETHER YOU LOOKED AT

01:12PM 5 ANY OF THE PRESS?

01:12PM 6 A. I DON'T REMEMBER SPECIFICALLY, BUT I DO REMEMBER I READ

01:12PM 7 THE "FORTUNE" -- I CERTAINLY READ THE "FORTUNE" ARTICLE, AND I

01:13PM 8 PROBABLY READ ONE OR MORE OTHER ARTICLES.

01:13PM 9 Q. YOU SAID YOU HAD A SPECIFIC RECOLLECTION OF READING THE

01:13PM 10 "FORTUNE" ARTICLE?

01:13PM 11 A. I DO. I KNOW I READ THE "FORTUNE" ARTICLE.

01:13PM 12 Q. THANK YOU.

01:13PM 13 IF YOU'LL NOW TURN TO PAGE 419.

01:13PM 14 A. I HAVE IT.

01:13PM 15 Q. PAGE 419 THROUGH PAGE 445, I'M WONDERING IF YOU'RE

01:13PM 16 FAMILIAR WITH THE DOCUMENTS LOCATED THERE?

01:13PM 17 A. I AM.

01:13PM 18 Q. AND WHAT ARE THOSE DOCUMENTS?

01:13PM 19 A. THIS IS A REPORT BY PFIZER OF A STUDY USING THERANOS'S

01:13PM 20 TECHNOLOGY.

01:13PM 21 Q. AND IN THE COPY IN THE BINDER AND ON THE SCREEN, IT LOOKS

01:13PM 22 LIKE SOME PARAGRAPHS CONTAIN HIGHLIGHTING; IS THAT RIGHT?

01:14PM 23 A. THEY DO.

01:14PM 24 Q. AND DO YOU RECOGNIZE THAT HIGHLIGHTING ON THE DOCUMENT?

01:14PM 25 A. I DID IT.



01:14PM 1 Q. YOU DID THE HIGHLIGHTING?

01:14PM 2 A. I DID THE HIGHLIGHTING, YES.

01:14PM 3 Q. I'M SORRY TO TALK OVER YOU.

01:14PM 4 YOU DID THE HIGHLIGHTING?

01:14PM 5 A. YES.

01:14PM 6 Q. WHEN YOU WERE REVIEWING THIS PFIZER REPORT, WERE THE

01:14PM 7 CONCLUSIONS OR THE REPRESENTATIONS IN IT, WERE THEY SIGNIFICANT

01:14PM 8 TO YOU?

01:14PM 9 A. YES.

01:14PM 10 Q. WHY?

01:14PM 11 A. PFIZER IS A LARGE, VERY SOPHISTICATED PHARMACEUTICAL

01:14PM 12 COMPANY THAT WOULD HAVE HAD A LOT OF KNOWLEDGE AND EXPERIENCE

01:14PM 13 IN THIS AREA, AND THE CONCLUSIONS WERE VERY POSITIVE ABOUT THE

01:14PM 14 TECHNOLOGY.

01:14PM 15 Q. THANK YOU.

01:14PM 16 YOUR HONOR, PERMISSION TO PUBLISH 5387H, PAGE 17.

01:14PM 17 PREVIOUSLY ADMITTED.

01:14PM 18 THE COURT: IT CAN BE PUBLISHED.

01:14PM 19 BY MR. SCHENK:

01:14PM 20 Q. SO, MR. MOSLEY, I'M SHOWING YOU A GROUP OF TEXT MESSAGES.

01:15PM 21 YOU'RE NOT ON THESE TEXT MESSAGES; IS THAT CORRECT?

01:15PM 22 A. NO, I'M NOT.

01:15PM 23 Q. SO IF WE CAN ZOOM IN ON THE TEXT MESSAGES, THE SECOND ONE

01:15PM 24 FROM THE BOTTOM. PRECISELY. THANK YOU.

01:15PM 25 DO YOU SEE THAT ON NOVEMBER 20TH, 2013, MS. HOLMES WRITES

01:15PM 1 TO MR. BALWANI, "AM PLANNING ON INCLUDING ALL WE SENT DST,  
01:15PM 2 INCLUDING THE PFIZER REPORT. LET ME KNOW IF U DISAGREE."  
01:15PM 3 DO YOU SEE THAT?  
01:15PM 4 A. I DO.  
01:15PM 5 Q. AND, MR. MOSLEY, I THINK YOU TOLD THE JURY YOU RECEIVED  
01:15PM 6 THIS BINDER IN AROUND AUGUST OF 2014; IS THAT CORRECT?  
01:15PM 7 A. THAT IS CORRECT.  
01:15PM 8 Q. I'D LIKE TO NOW RETURN TO THE BINDER. IF YOU'LL TURN TO  
01:15PM 9 PAGE 445.  
01:15PM 10 THIS PAGE APPEARS TO BE A LIST OF SELECT ANCHOR HOSPITAL  
01:15PM 11 PARTNERS.  
01:16PM 12 DO YOU SEE THAT?  
01:16PM 13 A. I DO.  
01:16PM 14 Q. AND DID YOU HAVE AN UNDERSTANDING OF WHAT WAS BEING  
01:16PM 15 REPRESENTED OR WHAT WAS BEING DISCUSSED HERE?  
01:16PM 16 A. I BELIEVE THESE WERE HOSPITALS THAT THERANOS WAS ALREADY  
01:16PM 17 WORKING WITH.  
01:16PM 18 Q. THANK YOU.  
01:16PM 19 IF YOU'LL NOW TURN TO PAGE 510.  
01:16PM 20 DO YOU RECOGNIZE THE DOCUMENT ON PAGE 510?  
01:16PM 21 A. I DO.  
01:16PM 22 Q. AND WHAT IS THIS?  
01:16PM 23 A. IT'S TYPICALLY REFERRED TO AS A CAP TABLE.  
01:16PM 24 Q. WHAT IS A CAP TABLE?  
01:16PM 25 A. A CAP TABLE SHOWS THE DIFFERENT SERIES OF STOCK THAT HAS

01:16PM 1 BEEN ISSUED BY VARIOUS -- BY A PARTICULAR COMPANY, AND THE  
01:16PM 2 PRICE, AND THE DATE OF ISSUANCE, AND THE TOTAL PROCEEDS.  
01:16PM 3 Q. SO WE SEE THERE'S A LINE FOR SERIES C-2.  
01:16PM 4 DO YOU SEE THAT?  
01:16PM 5 A. I DO.  
01:16PM 6 Q. AND I THINK YOU SAID EARLIER THAT WHEN YOU INVESTED IN  
01:17PM 7 THERANOS YOU PURCHASED C-2 STOCK; IS THAT RIGHT?  
01:17PM 8 A. THAT IS CORRECT.  
01:17PM 9 Q. AND DID YOU PAY \$17 PER SHARE?  
01:17PM 10 A. I DID.  
01:17PM 11 Q. AND IT LOOKS LIKE LISTED HERE THERE IS AN AMOUNT ABOUT  
01:17PM 12 \$194 MILLION.  
01:17PM 13 DO YOU SEE THAT?  
01:17PM 14 A. I DO.  
01:17PM 15 Q. AND WHAT DOES THAT MEAN?  
01:17PM 16 A. THAT WOULD HAVE BEEN THE TOTAL DOLLARS RAISED BY SELLING  
01:17PM 17 C-2 SHARES AS OF THAT DATE.  
01:17PM 18 Q. SO BECAUSE YOU RECEIVED THIS DOCUMENT BEFORE YOU HAD  
01:17PM 19 INVESTED, IT WOULD NOT INCLUDE YOUR INVESTMENT, FOR INSTANCE?  
01:17PM 20 A. THAT IS CORRECT.  
01:17PM 21 Q. SO THE -- IS THE CAP TABLE SORT OF A MOMENT IN TIME?  
01:17PM 22 A. YES.  
01:17PM 23 Q. IF YOU'LL NOW TURN TO PAGE 512.  
01:17PM 24 DO YOU RECOGNIZE THE DOCUMENT ON PAGE 512?  
01:17PM 25 A. I DO.

01:17PM 1 Q. WHAT IS THIS DOCUMENT?

01:17PM 2 A. IT WAS A PROJECTED STATEMENT OF INCOME.

01:17PM 3 Q. AND DO YOU SEE THE LINE FOR TOTAL REVENUE?

01:18PM 4 A. I DO.

01:18PM 5 Q. AND WHAT WAS THE TOTAL REVENUE PROJECTED FOR THE END OF

01:18PM 6 2014?

01:18PM 7 A. \$140 MILLION.

01:18PM 8 Q. AND DO WE KNOW THAT IT'S THE END OF 2014 BECAUSE OF THE

01:18PM 9 PERIOD ENDING DATE?

01:18PM 10 A. I SEE THE PERIOD ENDING DATE, YES.

01:18PM 11 Q. THE PERIOD ENDING DATE APPEARS TO BE THE LAST DAY OF THE

01:18PM 12 YEAR, DECEMBER 31ST OF 2014; IS THAT RIGHT?

01:18PM 13 A. THAT'S CORRECT.

01:18PM 14 Q. AND YOU SAID THAT THE PROJECTED REVENUE WAS \$140 MILLION

01:18PM 15 FOR 2014; IS THAT RIGHT?

01:18PM 16 A. CORRECT.

01:18PM 17 Q. WHEN DID YOU RECEIVE THIS PROJECTION?

01:18PM 18 A. I BELIEVE I RECEIVED IT AS PART OF THE INITIAL PACKET OF

01:18PM 19 DOCUMENTS.

01:18PM 20 Q. WITH THE AUGUST COVER LETTER?

01:18PM 21 A. CORRECT.

01:18PM 22 Q. SO IN AUGUST OF 2014 WERE YOU BEING TOLD THAT THERANOS WAS

01:18PM 23 PROJECTING \$140 MILLION OF REVENUE BY THE END OF THAT YEAR?

01:18PM 24 A. YES.

01:18PM 25 Q. AND HOW ABOUT THE SAME FOR 2015?

01:18PM 1 WHAT IS THE TOTAL REVENUE PROJECTED FOR 2015?

01:19PM 2 A. 990 MILLION.

01:19PM 3 Q. AND I WANT TO ASK ABOUT A FEW OF THE LINE ENTRIES.

01:19PM 4 DO YOU SEE LAB SERVICES FOR U.S. RETAIL PHARMACIES?

01:19PM 5 A. I DO.

01:19PM 6 Q. AND WHAT WAS THE PROJECTED REVENUE FOR '14, 2014?

01:19PM 7 A. 42 MILLION.

01:19PM 8 Q. AND HOW ABOUT FOR 2015?

01:19PM 9 A. 470 MILLION.

01:19PM 10 Q. WERE THOSE PROJECTIONS SIGNIFICANT IN YOUR DECISION TO

01:19PM 11 INVEST?

01:19PM 12 AND TO BE CLEAR, WHAT I MEAN IS THE PROJECTIONS AS A

01:19PM 13 WHOLE, THE TOTAL AMOUNT OF 2014 AND THE TOTAL AMOUNT FOR 2015?

01:19PM 14 A. WAS IT SIGNIFICANT?

01:19PM 15 Q. YES.

01:19PM 16 A. YES.

01:19PM 17 Q. WHY?

01:19PM 18 A. IT OBVIOUSLY SHOWED INCREDIBLE GROWTH IN THE REVENUES,

01:19PM 19 INCREDIBLE PROJECTED GROWTH IN THE REVENUES OF THE COMPANY.

01:19PM 20 Q. TALK TO ME FOR A MOMENT ABOUT THAT PHRASE "PROJECTED."

01:19PM 21 YOU RECEIVED IT IN AUGUST OF 2014.

01:19PM 22 A. RIGHT.

01:19PM 23 Q. AND IT'S PROJECTED REVENUE FOR THE REST OF THE YEAR.

01:19PM 24 WHEN YOU'RE EVALUATING THE SIGNIFICANCE OF THE

01:20PM 25 PROJECTIONS, HOW DO YOU, HOW DO YOU QUANTIFY, OR HOW IS IT

01:20PM 1 RELEVANT TO YOU THAT THESE NUMBERS ARE PROJECTIONS?

01:20PM 2 A. WELL, IT'S -- WHEN YOU'RE IN THE MIDDLE OF THE YEAR AND  
01:20PM 3 YOU GET A PROJECTED STATEMENT FOR THE ENTIRE YEAR, YOU WOULD  
01:20PM 4 EXPECT THAT IT WOULD BE ACTUAL NUMBERS UP UNTIL THAT POINT IN  
01:20PM 5 TIME, AND THE PROJECTION WOULD BE THE PORTION OF THE YEAR THAT  
01:20PM 6 HAD NOT YET ELAPSED.

01:20PM 7 Q. SO -- AND THEN TELL ME ABOUT 2015.

01:20PM 8 A. AND SO FOR 2015 IT WOULD HAVE BEEN A PROJECTION FOR THE  
01:20PM 9 WHOLE YEAR.

01:20PM 10 Q. AND DOES WHAT YOU JUST SAID SAY SOMETHING ABOUT HOW  
01:20PM 11 ACCURATE YOU PERSONALLY EXPECTED EACH OF THESE PROJECTIONS TO  
01:20PM 12 BE?

01:20PM 13 A. YES.

01:20PM 14 Q. AND WHAT IS THAT?

01:20PM 15 A. MORE ACCURATE FOR 2014 SINCE IT WOULD HAVE HAD ACTUAL  
01:20PM 16 NUMBERS FOR A PERIOD OF TIME AND PROJECTED FOR THE BALANCE.

01:20PM 17 AND, BY DEFINITION, LESS ACCURATE FOR 2015 BECAUSE IT WAS  
01:21PM 18 A PROJECTION FOR THE ENTIRE YEAR.

01:21PM 19 Q. IF THE REVENUE FOR 2015 WAS NEGLIGIBLE, A FEW HUNDRED  
01:21PM 20 THOUSAND DOLLARS OR LESS, TELL ME HOW THAT WOULD FACTOR INTO  
01:21PM 21 YOUR ANALYSIS OF IT BEING A PROJECTION IN 2015.

01:21PM 22 A. I'M NOT SURE WHAT YOU MEAN.

01:21PM 23 Q. YOU -- I THINK YOU SAID A MOMENT AGO THAT YOU EXPECTED THE  
01:21PM 24 2015 NUMBERS TO JUST BE A PROJECTION BECAUSE NO PORTION OF THAT  
01:21PM 25 YEAR HAD OCCURRED.

01:21PM 1 A. CORRECT.

01:21PM 2 Q. SO HOW ACCURATE DO THE NUMBERS HAVE TO BE THEN?

01:21PM 3 A. WELL, YOU WOULD EXPECT THEM TO HAVE A CERTAIN DEGREE OF  
01:21PM 4 ACCURACY BECAUSE THEY WOULD BE BASED ON -- THE REVENUES THAT  
01:21PM 5 ARE BEING REALIZED IN 2014 HAD ALREADY BEEN REALIZED UP UNTIL  
01:21PM 6 THAT DATE, AND WHAT THEY COULD REASONABLY FORESEE THEREAFTER  
01:21PM 7 FOR THE BALANCE OF THE YEAR.

01:21PM 8 SO IT WOULD BE -- THEY'RE VERY MEANINGFUL BECAUSE IT'S  
01:21PM 9 ONLY ANOTHER 18 MONTHS OR 17 MONTHS AFTER THE DATE I RECEIVED  
01:22PM 10 THEM.

01:22PM 11 Q. AND WHEN YOU SAID "THEY ARE VERY MEANINGFUL," DO YOU MEAN  
01:22PM 12 THE 2015 PROJECTIONS?

01:22PM 13 A. YEAH, THE 2015 NUMBERS ARE MEANINGFUL.

01:22PM 14 Q. GREAT. THANK YOU VERY MUCH.

01:22PM 15 IF YOU'LL NOW TURN TO PAGE 516.

01:22PM 16 DO YOU SEE THE DOCUMENT ON PAGE 516?

01:22PM 17 A. I DO.

01:22PM 18 Q. ON THIS PAGE, WERE YOU BEING PROVIDED AN ACTUAL NEWSPAPER  
01:22PM 19 ARTICLE?

01:22PM 20 A. YES.

01:22PM 21 Q. AND DO YOU RECALL WHETHER YOU READ THIS AT THE TIME?

01:22PM 22 A. I DID READ IT.

01:22PM 23 Q. DO YOU ALSO SEE ON THIS DOCUMENT SOME, IT LOOKS LIKE, SOME  
01:22PM 24 HIGHLIGHTING?

01:22PM 25 A. I DO.

01:22PM 1 Q. IS THAT YOUR HIGHLIGHTING?

01:22PM 2 A. IT IS.

01:22PM 3 Q. I'M GOING TO ASK YOU ABOUT ONE PORTION OF IT IF IT CAN BE  
01:22PM 4 ZOOMED TO A LEGIBLE STAGE.

01:22PM 5 DO YOU SEE THE PARAGRAPH THAT IS NOW ZOOMED IN THAT  
01:22PM 6 BEGINS, "THERANOS'S TECHNOLOGY"?

01:23PM 7 A. I SEE IT.

01:23PM 8 Q. IT READS, "THERANOS'S TECHNOLOGY ELIMINATES MULTIPLE LAB  
01:23PM 9 TRIPS BECAUSE IT CAN 'RUN ANY COMBINATION OF TESTS, INCLUDING  
01:23PM 10 SETS OF FOLLOW-ON TESTS,' AT ONCE, VERY QUICKLY, ALL FROM A  
01:23PM 11 SINGLE MICROSAMPLE."

01:23PM 12 DO YOU SEE THAT?

01:23PM 13 A. I DO.

01:23PM 14 Q. AND WAS THAT STATEMENT CONSISTENT WITH YOUR UNDERSTANDING  
01:23PM 15 OF THE PRESENT CAPABILITIES OF THE THERANOS TECHNOLOGY WHEN YOU  
01:23PM 16 WERE DECIDING TO INVEST?

01:23PM 17 A. IT WAS.

01:23PM 18 Q. WOULD YOU NOW PLEASE TURN TO PAGE 523.

01:23PM 19 MR. MOSLEY, WAS THE "FORTUNE" ARTICLE THAT YOU REFERENCED  
01:23PM 20 A MOMENT AGO ALSO INCLUDED IN THE BINDER? DO YOU RECALL?

01:23PM 21 A. I DON'T REMEMBER.

01:23PM 22 Q. YOU DON'T REMEMBER IF YOU RECEIVED THE -- JUST THE COVER  
01:24PM 23 OR THE ENTIRE ARTICLE?

01:24PM 24 A. I DON'T REMEMBER WHETHER IT WAS JUST THE COVER OR THE  
01:24PM 25 ENTIRE ARTICLE.



01:24PM 1 Q. DID YOU MAKE EFFORTS TO OBTAIN THE ARTICLE?

01:24PM 2 A. IF IT WASN'T IN THE PACKAGE, THEN I OBTAINED THE ARTICLE

01:24PM 3 AND READ IT.

01:24PM 4 Q. THANK YOU.

01:24PM 5 AND DO YOU KNOW IF YOU READ IT BEFORE INVESTING?

01:24PM 6 A. I DID.

01:24PM 7 Q. NOW, IF YOU'LL GRAB THAT SECOND BINDER THAT I HANDED YOU.

01:24PM 8 IN THE SECOND BINDER, WHICH IS EXHIBIT 3392, WOULD YOU

01:24PM 9 JUST TURN TO PAGE 2 OF THAT.

01:24PM 10 AND THIS WAS ALSO ADMITTED, YOUR HONOR. PERMISSION TO

01:24PM 11 PUBLISH?

01:24PM 12 THE COURT: YES.

01:24PM 13 MR. SCHENK: THANK YOU.

01:24PM 14 Q. DO YOU SEE THE SECOND LINE ON THE SCREEN NOW IN FRONT OF

01:24PM 15 YOU THAT READS, "THERANOS TECHNOLOGY IS ABLE TO PERFORM THE

01:25PM 16 FULL MENU OF LABORATORY TESTS"?

01:25PM 17 DO YOU SEE THAT?

01:25PM 18 A. I DO.

01:25PM 19 Q. AND WAS THAT REPRESENTATION SIGNIFICANT IN YOUR DECISION

01:25PM 20 TO INVEST?

01:25PM 21 A. IT WAS.

01:25PM 22 Q. AND WAS THAT STATEMENT, WHAT YOU AND I WERE TALKING ABOUT

01:25PM 23 A MOMENT AGO, THE IMPORTANCE OF A VOLUME OF TESTS THAT THERANOS

01:25PM 24 WAS CAPABLE OF DOING?

01:25PM 25 A. YES.

01:25PM 1 Q. WOULD YOU NOW TURN TO EXHIBIT 3844.

01:25PM 2 I'M SORRY, THIS WILL BE BACK IN THAT FIRST BINDER. YOU

01:25PM 3 CAN PUT THE SECOND BINDER ASIDE.

01:25PM 4 A. DID YOU SAY 3844?

01:25PM 5 Q. YES, SIR.

01:25PM 6 A. OKAY.

01:26PM 7 Q. DO YOU RECOGNIZE THE DOCUMENT AT 3844?

01:26PM 8 A. I DO.

01:26PM 9 Q. DID YOU REVIEW THIS DOCUMENT BEFORE INVESTING?

01:26PM 10 A. YES, I DID.

01:26PM 11 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 3844.

01:26PM 12 MR. CAZARES: NO OBJECTION.

01:26PM 13 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:26PM 14 (GOVERNMENT'S EXHIBIT 3844 WAS RECEIVED IN EVIDENCE.)

01:26PM 15 BY MR. SCHENK:

01:26PM 16 Q. MR. MOSLEY, WHAT DID YOU UNDERSTAND THIS DOCUMENT TO BE?

01:26PM 17 A. I UNDERSTOOD IT TO BE A SUMMARY OF THE TECHNOLOGY AS

01:26PM 18 REVIEWED BY JOHNS HOPKINS.

01:26PM 19 Q. AND DID YOU UNDERSTAND THIS TO BE A VALIDATION OF

01:26PM 20 THERANOS'S TECHNOLOGY BY JOHNS HOPKINS?

01:26PM 21 A. I DID.

01:26PM 22 Q. IF YOU'LL NOW TURN TO -- I'M SORRY.

01:26PM 23 WAS THAT SIGNIFICANT IN YOUR DECISION TO INVEST?

01:26PM 24 A. IT WAS.

01:26PM 25 Q. WHY?

01:26PM 1 A. JOHNS HOPKINS IS A LARGE, VERY HIGHLY RESPECTED HOSPITAL,  
01:27PM 2 AND I THOUGHT IT WOULD BE VERY CAPABLE OF MAKING A JUDGMENT OF  
01:27PM 3 THIS TYPE.

01:27PM 4 Q. THANK YOU.

01:27PM 5 IF YOU'LL NOW TURN TO TAB 4202.

01:27PM 6 IS 4202 AN EMAIL THREAD BETWEEN YOU AND MS. HOLMES?

01:27PM 7 A. IT IS.

01:27PM 8 Q. IN SEPTEMBER OF 2014?

01:27PM 9 A. YES.

01:27PM 10 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4202.

01:27PM 11 MR. CAZARES: NO OBJECTION.

01:27PM 12 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:27PM 13 (GOVERNMENT'S EXHIBIT 4202 WAS RECEIVED IN EVIDENCE.)

01:27PM 14 MR. SCHENK: THANK YOU.

01:27PM 15 Q. MR. MOSLEY, IF WE CAN START ON THE SECOND PAGE OF THIS  
01:27PM 16 DOCUMENT, THE EMAIL THAT IS SENT FROM YOU TO MS. HOLMES ON  
01:28PM 17 SEPTEMBER 2ND, 2014.

01:28PM 18 DO YOU SEE THAT EMAIL?

01:28PM 19 A. I DO.

01:28PM 20 Q. IN IT, IT LOOKS LIKE YOU'RE THANKING MS. HOLMES FOR THE  
01:28PM 21 EXTENSIVE MATERIALS ON THERANOS.

01:28PM 22 WAS THAT AT LEAST SOME OF -- WAS AT LEAST SOME OF THAT THE  
01:28PM 23 MATERIAL THAT YOU AND I JUST REVIEWED?

01:28PM 24 A. IT WAS.

01:28PM 25 Q. THOSE TWO LARGE STACKS OF DOCUMENTS?

01:28PM 1 A. IT WAS.

01:28PM 2 Q. YOU TELL HER THAT YOU ENJOYED READING THEM AND YOU ARE

01:28PM 3 APPRECIATIVE OF THE OPPORTUNITY TO BECOME A SHAREHOLDER.

01:28PM 4 DO YOU SEE THAT?

01:28PM 5 A. I DO.

01:28PM 6 Q. AND THEN A SENTENCE OR TWO LATER, YOU WRITE THAT YOU

01:28PM 7 PREPARED AN OUTLINE OVER THE WEEKEND WITH YOUR THOUGHTS AND

01:28PM 8 ANALYSIS THAT YOU ARE SENDING TO DR. KISSINGER.

01:28PM 9 DO YOU SEE THAT?

01:28PM 10 A. I DO.

01:28PM 11 Q. WHAT IS THAT DOCUMENT, THE OUTLINE? WHAT ARE YOU

01:28PM 12 REFERRING TO?

01:28PM 13 A. AN OUTLINE THAT I WROTE WITH SORT OF MY THOUGHTS AND SORT

01:28PM 14 OF PULLING TOGETHER THE INFORMATION THAT I HAD ABOUT THE

01:28PM 15 COMPANY.

01:28PM 16 Q. AND WHAT WAS THE PURPOSE OF THAT? WHY DID YOU PUT YOUR

01:29PM 17 THOUGHTS INTO AN OUTLINE?

01:29PM 18 A. REALLY PRIMARILY BECAUSE, AS I THINK I MENTIONED,

01:29PM 19 DR. KISSINGER HAD ASKED ME TO LOOK AT THE COMPANY AND MEET

01:29PM 20 ELIZABETH AND GIVE HIM MY VIEWS. AND IT WAS A WAY OF DOING

01:29PM 21 THAT.

01:29PM 22 Q. WHEN DR. KISSINGER MADE THAT REQUEST, DID YOU KNOW WHETHER

01:29PM 23 DR. KISSINGER HAD A POSITION AT THERANOS AT THE TIME?

01:29PM 24 A. I DID.

01:29PM 25 Q. AND WHAT POSITION WAS THAT?

01:29PM 1 A. HE WAS ON THE BOARD OF DIRECTORS.

01:29PM 2 Q. AND THEN ABOVE THIS EMAIL, YOU FOLLOW UP WITH MS. HOLMES,

01:29PM 3 IT LOOKS LIKE ONE DAY LATER, WITH A REFERENCE TO AN UPCOMING

01:29PM 4 BYRON TROTT CONFERENCE.

01:29PM 5 DO YOU SEE THAT?

01:29PM 6 A. I DO.

01:29PM 7 Q. THAT CONFERENCE APPEARS TO BE LATER THAT SEPTEMBER IN

01:29PM 8 CHICAGO; IS THAT RIGHT?

01:29PM 9 A. THAT'S CORRECT.

01:29PM 10 Q. IS THIS -- WHO IS BYRON TROTT?

01:29PM 11 A. BYRON TROTT WAS AN INVESTMENT BANKER AT GOLDMAN SACHS THAT

01:29PM 12 LEFT TO START HIS OWN FIRM.

01:29PM 13 Q. AND WHAT FIRM IS THAT?

01:29PM 14 A. IT'S BDT & COMPANY.

01:30PM 15 Q. WHERE YOU CURRENTLY WORK?

01:30PM 16 A. THAT IS CORRECT.

01:30PM 17 Q. AND DID YOU GO TO THIS CHICAGO CONFERENCE?

01:30PM 18 A. YES, I DID.

01:30PM 19 Q. AND DID YOU SEE MS. HOLMES THERE?

01:30PM 20 A. I DID.

01:30PM 21 Q. AND DID YOU DISCUSS YOUR POSSIBLE INVESTMENT IN THERANOS

01:30PM 22 WHILE YOU WERE AT THE BDT CONFERENCE IN CHICAGO?

01:30PM 23 A. I DON'T REMEMBER WHETHER WE SPECIFICALLY DISCUSSED IT AT

01:30PM 24 THAT TIME OR NOT.

01:30PM 25 Q. DID YOU DISCUSS THERANOS MORE GENERALLY, NOT SPECIFICALLY

01:30PM 1 YOUR INVESTMENT?

01:30PM 2 A. YES.

01:30PM 3 Q. IN THOSE DISCUSSIONS, DID MS. HOLMES SAY ANYTHING

01:30PM 4 DIFFERENT OR CONTRADICTORY TO THE MATERIALS THAT YOU AND I JUST

01:30PM 5 REVIEWED?

01:30PM 6 A. NO.

01:30PM 7 Q. DID YOU LEAVE WITH A DIFFERENT IMPRESSION OF WHAT THE

01:30PM 8 THERANOS TECHNOLOGY WAS THAN YOU HAD AFTER REVIEWING THE

01:30PM 9 MATERIALS?

01:30PM 10 A. NO.

01:30PM 11 Q. WOULD YOU NOW TURN TO 4197.

01:31PM 12 DO YOU RECOGNIZE THE DOCUMENT AT 4197?

01:31PM 13 A. I DO.

01:31PM 14 Q. AND WHAT IS THIS DOCUMENT?

01:31PM 15 A. IT IS A LETTER FROM ME TO DR. KISSINGER.

01:31PM 16 Q. AND WHAT IS THE DOCUMENT AFTER THE LETTER?

01:31PM 17 AFTER PAGE 1 THERE'S SOME FURTHER PAGES. DO YOU RECOGNIZE

01:31PM 18 THOSE PAGES?

01:31PM 19 A. IT'S THE OUTLINE THAT I PREPARED.

01:31PM 20 Q. THAT YOU JUST REFERENCED A MOMENT AGO IN THAT EMAIL?

01:31PM 21 A. YES.

01:31PM 22 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4197.

01:31PM 23 MR. CAZARES: NO OBJECTION.

01:31PM 24 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:31PM 25 (GOVERNMENT'S EXHIBIT 4197 WAS RECEIVED IN EVIDENCE.)

01:31PM 1 BY MR. SCHENK:

01:31PM 2 Q. MR. MOSLEY, IT LOOKS LIKE IN THE COVER LETTER YOU'RE

01:31PM 3 WRITING TO DR. KISSINGER TO INFORM HIM THAT YOU'RE ENCLOSING A

01:31PM 4 COPY OF THE OUTLINE; IS THAT CORRECT?

01:31PM 5 A. YES.

01:31PM 6 Q. AND YOU'VE DESCRIBED TO THE JURY SORT OF A DUAL PURPOSE

01:32PM 7 REVIEW OF THERANOS, TO PROVIDE SOME INFORMATION TO

01:32PM 8 DR. KISSINGER, AND ALSO TO EVALUATE A PERSONAL INVESTMENT

01:32PM 9 OPPORTUNITY; IS THAT CORRECT?

01:32PM 10 A. YES.

01:32PM 11 Q. WHICH OF THOSE TWO, OR BOTH, DID THIS OUTLINE SERVE?

01:32PM 12 A. THE FORMER, PROVIDING THE INFORMATION TO DR. KISSINGER.

01:32PM 13 Q. LET'S LOOK NOW ON PAGE 2 OF THE EXHIBIT, THE FIRST PAGE OF

01:32PM 14 YOUR OUTLINE.

01:32PM 15 FIRST, IF YOU'LL DESCRIBE FOR THE JURY GENERALLY WHAT THIS

01:32PM 16 DOCUMENT IS AND WHAT IT CONTAINS.

01:32PM 17 A. AS I SAID, IT WAS A SUMMARY OF ALL OF THE INFORMATION AND

01:32PM 18 MY THOUGHT WITH REGARD TO THE INFORMATION THAT I HAD RECEIVED

01:32PM 19 ABOUT THE COMPANY.

01:32PM 20 Q. THE SUMMARY OF THE INFORMATION INCLUDING THE LARGE STACKS

01:32PM 21 OF DOCUMENTS THAT YOU AND I LOOKED THROUGH?

01:32PM 22 A. CORRECT.

01:32PM 23 Q. IF YOU'LL NOW LOOK UNDER 1A. WE SEE SOME -- ON THE SCREEN

01:32PM 24 IT LOOKS RED.

01:32PM 25 DO YOU SEE THAT UNDERLINING?

01:33PM 1 A. I DO.

01:33PM 2 Q. AND DO YOU RECOGNIZE THAT UNDERLINING?

01:33PM 3 A. I BELIEVE IT WAS MY UNDERLINING.

01:33PM 4 Q. I WOULD LIKE TO ASK YOU FIRST ABOUT A. YOU WRITE, "THERE

01:33PM 5 IS SUBSTANTIAL DATA AND OTHER INFORMATION ATTESTING TO THE

01:33PM 6 QUALITY, PERFORMANCE AND RELIABILITY OF THE THERANOS TECHNOLOGY

01:33PM 7 AND EQUIPMENT. THERE DOES NOT APPEAR TO BE ANY SIGN OF ANY

01:33PM 8 QUESTION ABOUT THE QUALITY, ACCURACY, OR RELIABILITY OF

01:33PM 9 THERANOS'S BLOOD TESTING TECHNOLOGY."

01:33PM 10 DO YOU SEE THAT?

01:33PM 11 A. I DO.

01:33PM 12 Q. AND WAS THIS YOUR CONCLUSION?

01:33PM 13 A. BASED ON EVERYTHING I HAD READ, YES.

01:33PM 14 Q. I WAS JUST GOING TO ASK, WHAT IS THIS BASED ON?

01:33PM 15 A. THE MATERIALS THAT I RECEIVED.

01:33PM 16 Q. AND YOU SAID THE PURPOSE OF THIS DOCUMENT WAS TO PROVIDE

01:33PM 17 INFORMATION TO DR. KISSINGER; IS THAT RIGHT?

01:33PM 18 A. THAT'S CORRECT.

01:33PM 19 Q. IS THIS ALSO TRUE, THOUGH, OF YOUR UNDERSTANDING WHEN YOU

01:33PM 20 WERE MAKING A DECISION TO INVEST?

01:33PM 21 A. IT WAS.

01:33PM 22 Q. DID YOU THINK THAT THERE WAS ANY QUESTION ABOUT THE

01:34PM 23 QUALITY, ACCURACY, OR RELIABILITY OF THERANOS'S TECHNOLOGY?

01:34PM 24 A. I DID NOT.

01:34PM 25 Q. IF YOU'LL NOW TURN TO PAGE 3 OF THE EXHIBIT. DO YOU



01:34PM 1 SEE -- AND IF IT'S HELPFUL, YOU CAN TURN BACK TO THE FIRST  
01:34PM 2 PAGE TO SEE THE CARRY-OVER -- THE DUE DILIGENCE AND TECHNOLOGY  
01:34PM 3 REVIEW PREPARED BY JOHNS HOPKINS?

01:34PM 4 DO YOU SEE THAT?

01:34PM 5 A. YES.

01:34PM 6 Q. IT LOOKS LIKE THAT YOU PULLED SOME QUOTES FROM THE  
01:34PM 7 JOHNS HOPKINS DOCUMENT; IS THAT RIGHT?

01:34PM 8 A. I DID.

01:34PM 9 Q. AND DID YOU THINK THAT THIS DOCUMENT, THE JOHNS HOPKINS  
01:34PM 10 DOCUMENT, SUPPORTED THE CONCLUSION THAT YOU AND I JUST READ  
01:34PM 11 TOGETHER, THAT THERE DOESN'T APPEAR TO BE A QUESTION ABOUT THE  
01:34PM 12 QUALITY, ACCURACY, OR RELIABILITY OF THERANOS'S BLOOD TESTING  
01:34PM 13 TECHNOLOGY?

01:34PM 14 A. I BELIEVED THAT IT DID.

01:34PM 15 Q. YOU BELIEVED THAT THE JOHNS HOPKINS REPORT SUPPORTED THAT?

01:34PM 16 A. YES.

01:34PM 17 Q. AND THEN THE SECOND BULLET DOWN ON THE SCREEN IS ABOUT THE  
01:35PM 18 PFIZER REPORT.

01:35PM 19 DO YOU SEE THAT?

01:35PM 20 A. I DO.

01:35PM 21 Q. AND YOU WROTE, "THE MOST EXTENSIVE EVIDENCE SUPPLIED  
01:35PM 22 REGARDING THE RELIABILITY OF THE THERANOS TECHNOLOGY AND ITS  
01:35PM 23 APPLICATION IS A STUDY REPORT PREPARED BY PFIZER BASED ON A  
01:35PM 24 CLINICAL CANCER TREATMENT TRIAL."

01:35PM 25 DO YOU SEE THAT?

01:35PM 1 A. I DO.

01:35PM 2 Q. AND DID YOU THINK THAT THE REPORT YOU AND I LOOKED AT A

01:35PM 3 MOMENT AGO, THE PFIZER REPORT, WAS PREPARED BY PFIZER?

01:35PM 4 A. I DID.

01:35PM 5 Q. WHY DID YOU THINK THAT?

01:35PM 6 A. IT HAD THE PFIZER LOGO ON EVERY SINGLE PAGE OF IT, AND IT

01:35PM 7 WAS TALKING ABOUT A PFIZER STUDY.

01:35PM 8 Q. AND DID YOU, DID YOU READ THE CONTENT OF THE PFIZER

01:35PM 9 REPORT?

01:35PM 10 A. YES, I DID.

01:35PM 11 Q. WERE THE CONCLUSIONS WITHIN IT SIGNIFICANT TO YOU?

01:35PM 12 A. THEY WERE.

01:35PM 13 Q. WHY?

01:35PM 14 A. THEY WERE HIGHLY, HIGHLY COMPLIMENTARY OF THE RELIABILITY

01:35PM 15 AND EASE OF USE OF THE EQUIPMENT.

01:35PM 16 Q. THANK YOU.

01:35PM 17 AND THEN IF WE LOOK A LITTLE FURTHER DOWN, IT LOOKS LIKE

01:36PM 18 YOU WROTE THAT HERE.

01:36PM 19 DO YOU SEE THE PARAGRAPH BEGINNING, "THE CONCLUSIONS,"

01:36PM 20 TOWARDS THE BOTTOM OF THE PAGE?

01:36PM 21 A. I DO.

01:36PM 22 Q. "THE CONCLUSIONS IN THE PFIZER STUDY REPORT ARE

01:36PM 23 EXTRAORDINARILY COMPLIMENTARY AND VALIDATE THE THERANOS

01:36PM 24 TECHNOLOGY AND ITS APPLICATIONS."

01:36PM 25 MR. MOSLEY, DID YOU THINK THAT THE PFIZER REPORT VALIDATED

01:36PM 1 THE THERANOS TECHNOLOGY?

01:36PM 2 A. I DID.

01:36PM 3 Q. AND SAME QUESTION. WAS THAT SOMETHING THAT YOU BOTH WERE  
01:36PM 4 PROVIDING TO DR. KISSINGER, BUT THAT YOU ALSO PERSONALLY  
01:36PM 5 BELIEVED WHEN YOU MADE YOUR INVESTMENT DECISION?

01:36PM 6 A. THAT IS CORRECT.

01:36PM 7 Q. AND THEN BELOW THAT ON THE NEXT PAGE AND A HALF, DID YOU  
01:36PM 8 ACTUALLY PULL QUOTES FROM THE PFIZER REPORT AND PUT IT INTO  
01:36PM 9 THIS OUTLINE?

01:36PM 10 A. I DID.

01:36PM 11 Q. IF YOU'LL NOW TURN TO PAGE 4 UNDER THE THERANOS BUSINESS  
01:36PM 12 APPROACH.

01:36PM 13 IN THAT FIRST BULLET, YOU'RE DESCRIBING HOW MS. HOLMES AND  
01:36PM 14 THERANOS STAYED WELL BELOW THE RADAR SCREEN AND SORT OF SOME OF  
01:37PM 15 THE ADVANTAGES, IT GAVE THERANOS TIME TO, AND THEN YOU LIST  
01:37PM 16 SOME ADVANTAGES; IS THAT RIGHT?

01:37PM 17 A. YES.

01:37PM 18 Q. DID YOU THINK THAT THERANOS MADE A CONSCIOUS DECISION TO  
01:37PM 19 LEAVE THIS UNDER THE RADAR PERIOD OF TIME?

01:37PM 20 A. I DID.

01:37PM 21 Q. AND WHAT WAS YOUR UNDERSTANDING ABOUT THAT DECISION? DID  
01:37PM 22 YOU THINK THAT THERANOS WAS READY WHEN IT DECIDED TO LEAVE?

01:37PM 23 A. I THOUGHT THEY WERE READY TO HAVE IT MORE PUBLIC.

01:37PM 24 Q. AND HOW DID YOU REACH THAT CONCLUSION?

01:37PM 25 A. OBVIOUSLY THEY ENTERED INTO THE PARTNERSHIP WITH

01:37PM 1 WALGREENS, WHICH WAS PUBLICLY ANNOUNCED IN "THE

01:37PM 2 WALL STREET JOURNAL."

01:37PM 3 Q. IF YOU'LL TURN TO PAGE 5, WHICH CONTINUES SOME OF YOUR

01:37PM 4 LISTS OF ADVANTAGES THAT THERANOS HAD TIME TO.

01:37PM 5 THE SECOND BULLET DOWN READS, "THE WORK WITH THE PHARMA

01:38PM 6 COMPANIES (WHICH WERE UNDOUBTEDLY REQUIRED TO SIGN

01:38PM 7 CONFIDENTIALITY AGREEMENTS) PROVIDED VALIDATION OF THE

01:38PM 8 TECHNOLOGY AND APPROACH."

01:38PM 9 DO YOU SEE THAT ONE?

01:38PM 10 A. I DO.

01:38PM 11 Q. AND DID YOU THINK THAT THE WORK THAT THERANOS HAD DONE

01:38PM 12 WITH SOME OF THE PHARMACEUTICAL COMPANIES PROVIDED VALIDATION

01:38PM 13 FOR THE THERANOS TECHNOLOGY?

01:38PM 14 A. I DID.

01:38PM 15 Q. WHY DID YOU REACH THAT CONCLUSION?

01:38PM 16 A. WELL, BECAUSE OBVIOUSLY PFIZER IS ONE OF THE PHARMA

01:38PM 17 COMPANIES AND THEY WROTE A REPORT THAT WAS HIGHLY

01:38PM 18 COMPLIMENTARY.

01:38PM 19 Q. THE NEXT BULLET READS "A COMBINATION OF," AND THEN YOU

01:38PM 20 LIST FIVE SUBPARTS, "THE PRICE OF TESTS BY THERANOS; THE SPEED

01:38PM 21 OF THE DELIVERY OF THE RESULTS; THE RELIABILITY OF THE TEST

01:38PM 22 RESULTS; THE ABILITY TO PERFORM A VAST ARRAY OF TESTS; AND THE

01:38PM 23 ABILITY TO PERFORM A VAST NUMBER OF TESTS WITH ONLY A FEW DROPS

01:38PM 24 OF BLOOD REQUIRING JUST A FINGER PRICK."

01:38PM 25 DO YOU SEE THAT?

01:39PM 1 A. I DO.

01:39PM 2 Q. AND DID YOU UNDERSTAND THAT ALL OF THESE ITEMS THAT YOU

01:39PM 3 LISTED WERE CURRENT CAPABILITIES OF THERANOS TECHNOLOGY?

01:39PM 4 A. I DID.

01:39PM 5 Q. WHY DID YOU REACH THAT CONCLUSION?

01:39PM 6 A. WELL, BASED ON ALL OF THE MATERIALS, THAT WAS MY

01:39PM 7 UNDERSTANDING, THAT IT WAS AT THAT LEVEL, STAGE.

01:39PM 8 Q. I'M SORRY. THANK YOU.

01:39PM 9 IF YOU'LL NOW TURN TO PAGE 7 OF THIS EXHIBIT.

01:39PM 10 UNDER NUMBER 4, DO YOU SEE CURRENT AND PROJECTED FINANCIAL

01:39PM 11 RESULTS?

01:39PM 12 A. I DO.

01:39PM 13 Q. A INCLUDES THE 2014 CALENDAR YEAR.

01:39PM 14 DID YOU WRITE THAT "THERANOS WAS PROJECTING \$140 MILLION

01:39PM 15 OF REVENUE WITH A NET LOSS OF \$3 MILLION"?

01:39PM 16 A. I DID.

01:39PM 17 Q. AND THEN DO YOU ACTUALLY INCLUDE THE BREAKDOWN FROM THAT

01:39PM 18 DOCUMENT THAT YOU AND I LOOKED AT A MOMENT AGO?

01:39PM 19 A. YES.

01:39PM 20 Q. AND YOU DO THE SAME FOR 2015, THE PROJECTING OF

01:40PM 21 \$990 MILLION OF REVENUE?

01:40PM 22 A. YES.

01:40PM 23 Q. WITH A BREAKDOWN.

01:40PM 24 AND WAS THIS ALSO RELEVANT FOR BOTH THE WORK YOU WERE

01:40PM 25 DOING WITH DR. KISSINGER, BUT ALSO FOR YOUR PERSONAL

01:40PM 1 INVESTMENT?

01:40PM 2 A. IT WAS.

01:40PM 3 Q. FINALLY, IF YOU'LL TURN TO 5B TOWARDS THE BOTTOM, THE

01:40PM 4 PARAGRAPH THAT BEGINS, "ELIZABETH HOLMES."

01:40PM 5 IT'S AT THE BOTTOM OF PAGE 7.

01:40PM 6 A. OKAY, I'M THERE.

01:40PM 7 Q. THE PARAGRAPH THAT DESCRIBES THE SHARES THAT MS. HOLMES

01:40PM 8 OWNS.

01:40PM 9 DO YOU SEE THAT?

01:40PM 10 A. I DO.

01:40PM 11 Q. AND WHAT WAS THE POINT HERE? WHY WERE YOU SORT OF DOING

01:40PM 12 ANALYSIS OF THE OWNERSHIP OF SHARES?

01:40PM 13 A. IT WAS FOR PURPOSES OF INDICATING THAT SHE HAD ABSOLUTE

01:40PM 14 COMPLETE CONTROL OF THE COMPANY.

01:40PM 15 Q. AND IS THAT SIGNIFICANT BOTH FOR THE WORK THAT YOU WERE

01:40PM 16 DOING FOR DR. KISSINGER, AND ALSO FOR YOUR PERSONAL INVESTMENT?

01:40PM 17 A. IT WAS.

01:40PM 18 Q. HOW SO?

01:41PM 19 A. WELL, IF SHE WAS THE PERSON RESPONSIBLE FOR HAVING

01:41PM 20 DEVELOPED THE TECHNOLOGY, YOU WOULD WANT TO BE SURE THAT SHE

01:41PM 21 WOULD BE IN CONTROL OF THE COMPANY THAT WOULD THEN ROLL OUT

01:41PM 22 THAT TECHNOLOGY.

01:41PM 23 Q. UNDERSTOOD.

01:41PM 24 IF YOU'LL NOW TURN TO PAGE 9 OF THIS EXHIBIT.

01:41PM 25 YOU HAVE A SECTION ENTITLED QUESTIONS, CONCERNS, AND

01:41PM 1 RISKS.

01:41PM 2 DO YOU SEE THAT?

01:41PM 3 A. I DO.

01:41PM 4 Q. AND THE RISKS IN B INCLUDE THE REVENUE PROJECTIONS BEING

01:41PM 5 SUBSTANTIAL; IS THAT RIGHT?

01:41PM 6 A. CORRECT.

01:41PM 7 Q. AND THE -- THERE'S A REFERENCE TO THE NUMBER OF THERANOS

01:41PM 8 LOCATIONS WITHIN WALGREENS AT THE TIME, AND I THINK YOU WRITE

01:41PM 9 THAT IT WOULD BE HELPFUL TO KNOW HOW MANY LOCATIONS ARE ASSUMED

01:41PM 10 IN THE 2015 PROJECTIONS; IS THAT RIGHT?

01:41PM 11 A. YES.

01:41PM 12 Q. AND IN C YOU WRITE, "AN IMPORTANT QUESTION IS WHY THERANOS

01:41PM 13 IS NOW WILLING TO SELL ADDITIONAL SHARES AND WISHES TO RAISE

01:42PM 14 ADDITIONAL CASH."

01:42PM 15 WAS THAT ANOTHER QUESTION OR A CONCERN?

01:42PM 16 A. IT WAS A QUESTION.

01:42PM 17 Q. AND THEN IN D YOU WRITE ABOUT THE FAIRLY UNUSUAL

01:42PM 18 PROVISION.

01:42PM 19 IS THIS THE PROVISION YOU AND I SPOKE ABOUT EARLIER ABOUT

01:42PM 20 REDEEMING YOUR SHARES?

01:42PM 21 A. YES, IT IS.

01:42PM 22 Q. AMONG THE RISKS THAT YOU IDENTIFY, WERE ANY ABOUT THE

01:42PM 23 TECHNOLOGY, THE ACCURACY, RELIABILITY OF THE TECHNOLOGY?

01:42PM 24 A. THEY WERE NOT.

01:42PM 25 Q. WHY?

01:42PM 1 A. BECAUSE I BELIEVED EVERYTHING I HAD READ AND SEEN AND THAT  
01:42PM 2 IT WAS VERY RELIABLE.

01:42PM 3 Q. WERE ANY OF THE RISKS THAT YOU IDENTIFIED RECEIVING FALSE  
01:42PM 4 STATEMENTS OR FALSE INFORMATION FROM INDIVIDUALS AT THERANOS?

01:42PM 5 MR. CAZARES: OBJECTION. FOUNDATION.

01:42PM 6 THE COURT: WOULD YOU ASK THAT AGAIN? I'M NOT SURE  
01:42PM 7 I UNDERSTAND THAT QUESTION.

01:42PM 8 MR. SCHENK: YES, YOUR HONOR.

01:42PM 9 Q. MR. MOSLEY, YOU'VE IDENTIFIED SOME RISKS HERE THAT INCLUDE  
01:43PM 10 THE NUMBER OF STORES THAT THERANOS HAS ENTERED INTO WITH  
01:43PM 11 WALGREENS, WHY THEY'RE SELLING SHARES, AND THIS UNUSUAL  
01:43PM 12 PROVISION, AMONG OTHERS; IS THAT RIGHT?

01:43PM 13 A. YES.

01:43PM 14 Q. AND I'M ASKING YOU ABOUT SOME RISKS THAT YOU DID NOT  
01:43PM 15 IDENTIFY, THINGS THAT YOU DIDN'T THINK WERE A RISK. IS THAT --  
01:43PM 16 DO YOU UNDERSTAND THAT LINE OF QUESTIONING?

01:43PM 17 A. I DO.

01:43PM 18 Q. AND I ASKED YOU A MOMENT AGO IF ONE OF THE RISKS YOU  
01:43PM 19 IDENTIFIED WAS A RISK ASSOCIATED WITH THE TECHNOLOGY, WHETHER  
01:43PM 20 IT PROVIDED ACCURATE RESULTS.

01:43PM 21 DO YOU UNDERSTAND THAT QUESTION?

01:43PM 22 A. I DO.

01:43PM 23 Q. AND WHAT WAS YOUR ANSWER ON THAT ONE?

01:43PM 24 A. MY ANSWER WAS THAT I DID NOT CONSIDER THAT A RISK.

01:43PM 25 Q. WHY NOT?



01:43PM 1 A. BECAUSE I THOUGHT EVERYTHING I HAD READ AND RECEIVED  
01:43PM 2 INDICATED THAT THE TECHNOLOGY WAS SOUND.

01:43PM 3 Q. AND TO FOLLOW UP ON THAT, YOU SAID THAT EVERYTHING THAT  
01:43PM 4 YOU RECEIVED SAID THE TECHNOLOGY WAS SOUND.

01:43PM 5 I'M WONDERING IF YOU IDENTIFIED AS A RISK THAT THE THINGS  
01:43PM 6 THAT YOU RECEIVED MIGHT NOT BE ACCURATE? THE FOUNDATION OF THE  
01:44PM 7 INFORMATION YOU RECEIVED, DID YOU EVER CALL INTO QUESTION THAT  
01:44PM 8 ACCURACY?

01:44PM 9 MR. CAZARES: OBJECTION. FOUNDATION AND RELEVANCE.

01:44PM 10 THE COURT: OVERRULED.

01:44PM 11 YOU CAN ANSWER THE QUESTION.

01:44PM 12 THE WITNESS: I DID NOT FACTOR IN SOME POSSIBILITY  
01:44PM 13 THAT THINGS THAT I RECEIVED WERE NOT ACCURATE.

01:44PM 14 BY MR. SCHENK:

01:44PM 15 Q. WHY NOT?

01:44PM 16 A. BECAUSE I BELIEVED THEY WERE ACCURATE.

01:44PM 17 Q. FAIR ENOUGH. THANK YOU.

01:44PM 18 IF YOU'LL TURN TO TAB 4221.

01:44PM 19 MR. MOSLEY, IS THIS ALSO AN EMAIL THREAD THAT CONTAINS  
01:44PM 20 SEVERAL EMAILS BETWEEN YOU AND MS. HOLMES?

01:44PM 21 A. IT IS.

01:44PM 22 Q. IS THIS ONE ALSO IN SEPTEMBER, A LITTLE BIT LATER,  
01:44PM 23 SEPTEMBER OF 2014?

01:44PM 24 A. THEY ARE.

01:44PM 25 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4221.

01:44PM 1 MR. CAZARES: NO OBJECTION.

01:45PM 2 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:45PM 3 (GOVERNMENT'S EXHIBIT 4221 WAS RECEIVED IN EVIDENCE.)

01:45PM 4 BY MR. SCHENK:

01:45PM 5 Q. MR. MOSLEY, ON THE FIRST PAGE, DO YOU SEE THE EMAIL FROM

01:45PM 6 THURSDAY, THE 25TH OF SEPTEMBER, FROM YOU TO MS. HOLMES?

01:45PM 7 A. I DO.

01:45PM 8 Q. AND IN IT YOU WRITE THAT YOU'RE LOOKING FORWARD TO GETTING

01:45PM 9 OUT TO CALIFORNIA TO SEE MS. HOLMES AND MEET HER TEAM.

01:45PM 10 AND THERE'S A REFERENCE TO THE NIARCHOS FOUNDATION.

01:45PM 11 DO YOU SEE THAT?

01:45PM 12 A. I DO.

01:45PM 13 Q. DID YOU COME OUT TO CALIFORNIA AND MEET WITH MS. HOLMES AT

01:45PM 14 SOME POINT FOLLOWING THIS EMAIL?

01:45PM 15 A. I DID.

01:45PM 16 Q. A LITTLE FURTHER DOWN IN THAT EMAIL YOU REFERENCE THE

01:45PM 17 DR. KISSINGER MEMO OR SUMMARY.

01:45PM 18 DO YOU SEE THAT?

01:45PM 19 A. YES, I DO.

01:45PM 20 Q. AND IT LOOKS LIKE YOU'RE ASKING ABOUT MS. HOLMES'S COMFORT

01:45PM 21 LEVEL IN SHARING THE MEMO; IS THAT RIGHT?

01:46PM 22 I'M SORRY, LET ME REPHRASE THAT.

01:46PM 23 I THINK YOU'RE SAYING THAT DR. KISSINGER IS WONDERING

01:46PM 24 ABOUT AN ABILITY TO SHARE THE MEMO; IS THAT CORRECT?

01:46PM 25 A. THAT IS CORRECT.

01:46PM 1 Q. AND WHAT WAS -- WHAT WAS HAPPENING THERE? CAN YOU EXPLAIN  
01:46PM 2 TO THE JURY THAT?

01:46PM 3 A. WELL, HE OBVIOUSLY, AS IT SAYS HERE, ASKED ME IF I WAS  
01:46PM 4 COMFORTABLE SENDING THE MEMO THAT I PREPARED TO OTHERS THAT HE  
01:46PM 5 KNEW THAT MIGHT BE INTERESTED IN THE COMPANY.

01:46PM 6 Q. AND DO YOU KNOW WHETHER -- FIRST, LET ME ASK YOU, DID YOU  
01:46PM 7 SHARE THAT MEMO WITH OTHER INDIVIDUALS WHO WERE CONSIDERING AN  
01:46PM 8 INVESTMENT IN THERANOS?

01:46PM 9 A. I BELIEVE THAT I DID.

01:46PM 10 Q. DO YOU KNOW WHETHER DR. KISSINGER DID?

01:46PM 11 A. I SUSPECT THAT HE DID, BUT I DON'T KNOW FOR SURE.

01:46PM 12 Q. OKAY. AND TO BE CLEAR, THAT WAS THE MEMO THAT YOU AND I  
01:46PM 13 LOOKED AT A MOMENT AGO? I THINK IT WAS 4197.

01:46PM 14 A. YES.

01:46PM 15 Q. THERE'S THE REFERENCE TO GOING OUT TO CALIFORNIA. LET'S  
01:46PM 16 TALK ABOUT THAT FOR A MOMENT.

01:46PM 17 DID YOU MAKE A TRIP OUT TO CALIFORNIA IN THIS TIMEFRAME,  
01:47PM 18 SEPTEMBER OR OCTOBER OF 2014?

01:47PM 19 A. I DID.

01:47PM 20 Q. HOW MANY TRIPS?

01:47PM 21 A. I BELIEVE TWO.

01:47PM 22 Q. AND DID YOU HAVE MEETINGS? WAS ONE OF THEM IN REFERENCE  
01:47PM 23 TO THE NIARCHOS FOUNDATION?

01:47PM 24 A. YES.

01:47PM 25 Q. AND WHAT WAS THE OTHER ONE?

01:47PM 1 A. SOME INDIVIDUALS FROM COX.

01:47PM 2 Q. IS THAT C-O-X?

01:47PM 3 A. C-O-X.

01:47PM 4 Q. AND LET'S TALK FIRST ABOUT THE NIARCHOS MEETING.

01:47PM 5 FIRST, WHAT WAS THE PURPOSE OF THAT MEETING? DO YOU

01:47PM 6 RECALL?

01:47PM 7 A. THE PURPOSE OF IT WAS TO LET INDIVIDUALS FROM THE NIARCHOS

01:47PM 8 FOUNDATION THAT RAN THEIR INVESTMENT OPERATIONS TO GET TO KNOW

01:47PM 9 THE COMPANY AND SEE WHETHER THEY HAD ANY INTEREST IN IT.

01:47PM 10 Q. AND WHY DID YOU GO?

01:47PM 11 A. ANDREAS, WHO IS REFERRED TO HERE, IS A FRIEND OF MINE AND

01:47PM 12 A CLIENT, AND HE HAD SUGGESTED THAT IT WOULD BE NICE IF I WENT

01:48PM 13 WITH THEM.

01:48PM 14 Q. AND DID YOU HAVE A MEETING WITH MS. HOLMES?

01:48PM 15 A. WE DID.

01:48PM 16 Q. DO YOU KNOW, WERE ANY OTHER PEOPLE FROM THERANOS PRESENT

01:48PM 17 FOR THE MEETING?

01:48PM 18 A. YES.

01:48PM 19 Q. WHO?

01:48PM 20 A. MR. BALWANI WAS PRESENT.

01:48PM 21 Q. DO YOU KNOW HOW LONG THE MEETING LASTED?

01:48PM 22 A. I DON'T REMEMBER FOR SURE, BUT IT WAS A RELATIVELY LENGTHY

01:48PM 23 MEETING. I BELIEVE IT WAS AT LEAST AN HOUR AND A HALF.

01:48PM 24 Q. AND WAS THIS MEETING BEFORE YOU INVESTED IN THERANOS?

01:48PM 25 A. YES, IT WAS.

01:48PM 1 Q. AND THE MEETING I'LL TALK TO YOU ABOUT IN A MOMENT, THE  
01:48PM 2 COX MEETING, WAS THAT ALSO BEFORE YOU INVESTED IN THERANOS?

01:48PM 3 A. YES, IT WAS.

01:48PM 4 Q. DO YOU HAVE A RECOLLECTION OF THE TOPICS THAT WERE  
01:48PM 5 DISCUSSED DURING THIS NIARCHOS MEETING?

01:48PM 6 A. NOT SPECIFICALLY, JUST A WHOLE RANGE OF TOPICS ABOUT THE  
01:48PM 7 COMPANY.

01:48PM 8 Q. YOU DON'T HAVE A SPECIFIC RECOLLECTION OF SPECIFIC TOPICS,  
01:48PM 9 BUT RATHER JUST A GENERAL RECOLLECTION THAT THE MEETING  
01:48PM 10 OCCURRED?

01:48PM 11 A. JUST A GENERAL RECOLLECTION, THE FACT THAT WE DISCUSSED A  
01:48PM 12 LOT OF ASPECTS OF THE COMPANY.

01:48PM 13 Q. DO YOU RECALL THE TOPICS THAT MS. HOLMES SPOKE ABOUT, THE  
01:49PM 14 SPECIFIC TOPICS THAT MS. HOLMES SPOKE ABOUT?

01:49PM 15 A. NO, NOT IN PARTICULAR, NO.

01:49PM 16 Q. DO YOU RECALL WHETHER MR. BALWANI SPOKE DURING THE  
01:49PM 17 MEETING?

01:49PM 18 A. I BELIEVE HE DID.

01:49PM 19 Q. DO YOU REMEMBER THE SPECIFIC TOPICS THAT MR. BALWANI SPOKE  
01:49PM 20 ABOUT?

01:49PM 21 A. I DON'T HAVE A SPECIFIC MEMORY.

01:49PM 22 Q. YOU AND I HAVE REVIEWED THE BINDER, THE STACKS OF  
01:49PM 23 DOCUMENTS THAT YOU RECEIVED FROM THERANOS.

01:49PM 24 DO YOU RECALL THAT?

01:49PM 25 A. YES.

01:49PM 1 Q. AND YOU DESCRIBED TO THE JURY AN UNDERSTANDING OF THE  
01:49PM 2 TECHNOLOGY THAT YOU RECEIVED FROM REVIEWING THOSE MATERIALS; IS  
01:49PM 3 THAT RIGHT?  
01:49PM 4 A. RIGHT.  
01:49PM 5 Q. I'M WONDERING IF ANYTHING IN THIS NIARCHOS MEETING CHANGED  
01:49PM 6 YOUR UNDERSTANDING OF THE TECHNOLOGY?  
01:49PM 7 A. IT DID NOT.  
01:49PM 8 Q. DID ANYTHING OCCUR DURING THIS MEETING THAT DISCOURAGED  
01:49PM 9 YOU FROM INVESTING?  
01:49PM 10 A. NO.  
01:49PM 11 Q. WERE THERE ANY REVISIONS? WERE THERE ANY CORRECTIONS OR  
01:49PM 12 AMENDMENTS TO MATERIAL THAT YOU RECEIVED IN THOSE STACKS THAT  
01:49PM 13 YOU AND I REVIEWED?  
01:49PM 14 A. NO.  
01:49PM 15 Q. WERE THERE ANY INSTANCES WHEN MS. HOLMES SAID SOMETHING TO  
01:49PM 16 YOU AND MR. BALWANI CORRECTED HER?  
01:49PM 17 A. NO.  
01:49PM 18 Q. HOW ABOUT THE REVERSE? WERE THERE ANY INSTANCES WHERE  
01:50PM 19 MR. BALWANI SAID SOMETHING TO YOU AND MS. HOLMES CORRECTED HIM?  
01:50PM 20 A. NO.  
01:50PM 21 Q. THE COX MEETING, DO YOU REMEMBER HOW LONG AFTER THE  
01:50PM 22 NIARCHOS MEETING THAT ONE HAPPENED?  
01:50PM 23 A. I BELIEVE IT PREDATED.  
01:50PM 24 Q. OH, I'M SORRY. I DID THE ORDER INCORRECTLY?  
01:50PM 25 A. RIGHT. I THINK IT PREDATED THE NIARCHOS MEETING.

01:50PM 1 Q. AND DO YOU KNOW WHETHER THE COX MEETING WAS IN SEPTEMBER  
01:50PM 2 OR OCTOBER?

01:50PM 3 A. IT WAS IN OCTOBER.

01:50PM 4 Q. AND WAS THE NIARCHOS MEETING ALSO IN OCTOBER?

01:50PM 5 A. IN OCTOBER AS WELL.

01:50PM 6 Q. WERE THEY BOTH IN PERSON IN PALO ALTO?

01:50PM 7 A. THEY WERE.

01:50PM 8 Q. AND DO YOU REMEMBER WHETHER MS. HOLMES WAS PRESENT FOR THE  
01:50PM 9 COX MEETING?

01:50PM 10 A. SHE WAS.

01:50PM 11 Q. WAS ANYBODY ELSE FROM THERANOS PRESENT?

01:50PM 12 A. MR. BALWANI WAS PRESENT.

01:50PM 13 Q. DO YOU RECALL WHETHER THERE WAS ANY THIRD PERSON? ANYBODY  
01:50PM 14 ELSE AT THAT MEETING?

01:50PM 15 A. NOT THAT I REMEMBER.

01:50PM 16 Q. I'M NOT SURE IF I ASKED YOU THAT QUESTION FOR NIARCHOS.  
01:50PM 17 WAS THERE A THIRD PERSON FROM THERANOS AT THE NIARCHOS  
01:50PM 18 MEETING?

01:50PM 19 A. NOT THAT I REMEMBER.

01:51PM 20 Q. SO SAME QUESTIONS FOR THE COX MEETING.  
01:51PM 21 THE BINDERS OF THE DOCUMENTS THAT YOU RECEIVED GAVE YOU AN  
01:51PM 22 UNDERSTANDING OF THERANOS.

01:51PM 23 DID THAT UNDERSTANDING CHANGE DURING THE COURSE OF THE COX  
01:51PM 24 MEETING?

01:51PM 25 A. IT DID NOT.

01:51PM 1 Q. WERE THERE ANY AMENDMENTS OR CORRECTIONS THAT WERE MADE  
01:51PM 2 DURING THAT MEETING, THINGS LIKE IN THE BINDER OF DOCUMENTS YOU  
01:51PM 3 RECEIVED A DOCUMENT THAT SAID THE FOLLOWING, BUT I WANT TO  
01:51PM 4 REFINE OR ALTER THAT?

01:51PM 5 DID THAT EVER HAPPEN DURING THE MEETING?

01:51PM 6 A. IT DID NOT.

01:51PM 7 Q. DO YOU REMEMBER THE TOPICS THAT MS. HOLMES ADDRESSED IN  
01:51PM 8 THE COX MEETING?

01:51PM 9 A. NOT SPECIFICALLY.

01:51PM 10 Q. DO YOU REMEMBER WHETHER SHE SPOKE DURING THE COX MEETING?

01:51PM 11 A. YES.

01:51PM 12 Q. AND WHAT DO YOU RECALL?

01:51PM 13 A. SHE -- I RECALL THAT SHE SPOKE AT GREAT LENGTH ABOUT THE  
01:51PM 14 COMPANY.

01:51PM 15 Q. AND DO YOU RECALL THE LENGTH OF THE COX MEETING?

01:51PM 16 A. AGAIN, I BELIEVE IT WAS WELL WITHIN -- CERTAINLY IN EXCESS  
01:51PM 17 OF AN HOUR AND A HALF. IT COULD HAVE BEEN SUBSTANTIALLY MORE  
01:51PM 18 THAN THAT.

01:51PM 19 Q. DO YOU RECALL WHETHER MR. BALWANI SPOKE IN THE COX  
01:52PM 20 MEETING?

01:52PM 21 A. I BELIEVE HE DID.

01:52PM 22 Q. DO YOU RECALL ANY SPECIFIC TOPICS THAT MR. BALWANI  
01:52PM 23 ADDRESSED DURING THAT MEETING?

01:52PM 24 A. I DON'T.

01:52PM 25 Q. WERE THERE ANY INSTANCES WHEN MS. HOLMES WAS SPEAKING AND



01:52PM 1 MR. BALWANI CORRECTED HER DURING THE COX MEETING?

01:52PM 2 A. NO.

01:52PM 3 Q. WERE THERE ANY INSTANCES WHEN MR. BALWANI WAS SPEAKING AND

01:52PM 4 MS. HOLMES CORRECTED HIM?

01:52PM 5 A. I DON'T REMEMBER ANY.

01:52PM 6 Q. BY THE END OF THE COX MEETING, WERE THERE -- DID YOU HAVE

01:52PM 7 A DIFFERENT EXCITEMENT LEVEL ABOUT INVESTING? WERE YOU LESS

01:52PM 8 INTERESTED IN INVESTING AT THE END OF THE MEETING?

01:52PM 9 A. NO.

01:52PM 10 Q. AND I THINK I ASKED THAT QUESTION, BUT JUST TO BE SURE, IS

01:52PM 11 THE SAME TRUE FOR NIARCHOS? DID YOU LEAVE THE MEETING WITH THE

01:52PM 12 SAME LEVEL OF INVESTMENT ENTHUSIASM?

01:52PM 13 A. I DID.

01:52PM 14 Q. WOULD YOU NOW PLEASE TURN TO EXHIBIT 4284.

01:53PM 15 MR. MOSLEY, IS THIS AN EMAIL FROM YOU TO MS. HOLMES, AND

01:53PM 16 THEN A RESPONSE FROM MS. HOLMES TO YOU IN OCTOBER OF 2014?

01:53PM 17 A. YES.

01:53PM 18 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4284.

01:53PM 19 MR. CAZARES: NO OBJECTION.

01:53PM 20 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:53PM 21 (GOVERNMENT'S EXHIBIT 4284 WAS RECEIVED IN EVIDENCE.)

01:53PM 22 BY MR. SCHENK:

01:53PM 23 Q. MR. MOSLEY, THE EMAIL ON THE BOTTOM, THE ONE FROM YOU TO

01:53PM 24 MS. HOLMES, IS SENT ON MONDAY, OCTOBER 20TH OF 2014; IS THAT

01:53PM 25 RIGHT?

01:53PM 1 A. CORRECT.

01:53PM 2 Q. AND YOU BEGIN BY SAYING, "ELIZABETH,

01:53PM 3 "IT WAS GOOD TO SEE YOU ON FRIDAY."

01:53PM 4 DO YOU SEE THAT?

01:53PM 5 A. I DO.

01:53PM 6 Q. AND SO WOULD AT LEAST ONE OF THOSE TWO MEETINGS THAT YOU

01:53PM 7 AND I JUST DISCUSSED HAVE OCCURRED THE FRIDAY BEFORE YOU SENT

01:53PM 8 THIS EMAIL?

01:53PM 9 A. IT DID.

01:53PM 10 Q. YOU WERE OUT IN PALO ALTO IN PERSON AT THAT POINT?

01:54PM 11 A. THAT IS CORRECT.

01:54PM 12 Q. AND THEN IF YOU'LL LOOK SEVERAL PARAGRAPHS DOWN, THERE'S A

01:54PM 13 PARAGRAPH THAT BEGINS, "AS WE DISCUSSED, I WILL SPEAK."

01:54PM 14 DO YOU SEE THAT ONE?

01:54PM 15 A. YES.

01:54PM 16 Q. YOU WILL SPEAK WITH DAVID ABOUT THE CONCERN WITH THE

01:54PM 17 MANDATORY REDEMPTION CLAUSE.

01:54PM 18 DO YOU SEE THAT?

01:54PM 19 A. I DO.

01:54PM 20 Q. AND IS THAT THE SECTION THAT YOU AND I TALKED ABOUT AT THE

01:54PM 21 BEGINNING OF YOUR TESTIMONY WHERE THE BOARD COULD BUY BACK

01:54PM 22 SHARES?

01:54PM 23 A. THAT'S CORRECT.

01:54PM 24 Q. AND THERE'S A REFERENCE TO DAVID. AND WHO IS THAT?

01:54PM 25 A. DAVID BOIES.

01:54PM 1 Q. AND WHO IS THAT?

01:54PM 2 A. DAVID BOIES WAS A FORMER PARTNER OF MINE AT

01:54PM 3 CRAVATH, SWAINE & MOORE WHO, BY THIS POINT, HAD RETIRED FROM

01:54PM 4 CRAVATH AND WAS WORKING AND STARTED HIS OWN FIRM.

01:54PM 5 Q. AND YOU MENTIONED TO MS. HOLMES THAT YOU'RE GOING TO

01:54PM 6 DISCUSS THAT PROVISION WITH MR. BOIES. WHY WOULD HE BE THE

01:54PM 7 PERSON THAT YOU'RE GOING TO TALK TO ABOUT THIS PROVISION?

01:54PM 8 A. I BELIEVE AT THE TIME HE WAS DOING LEGAL WORK FOR THE

01:54PM 9 COMPANY.

01:55PM 10 Q. FOR THE COMPANY?

01:55PM 11 A. FOR THE COMPANY OR THE BOARD. I DIDN'T SPECIFICALLY KNOW.

01:55PM 12 BUT DOING LEGAL WORK IN CONNECTION WITH THE COMPANY.

01:55PM 13 Q. AND YOU REFERENCE THAT YOU WILL SPEAK TO HIM.

01:55PM 14 DID YOU, IN FACT, THEN SPEAK TO MR. BOIES ABOUT THIS

01:55PM 15 PROVISION?

01:55PM 16 A. I DID.

01:55PM 17 Q. AND THEN YOU WRITE AT THE VERY END, "PERSONALLY, I WOULD

01:55PM 18 BE DELIGHTED AND HONORED TO BE PART OF YOUR FIRST CLOSING. MY

01:55PM 19 HOPE WOULD BE TO INVEST \$6 MILLION, WHICH I WOULD PROPOSE TO

01:55PM 20 INVEST THROUGH AN LLC WHOLLY OWNED BY ME AND TRUSTS FOR MY

01:55PM 21 THREE DAUGHTERS, SO THAT IT WILL LIMIT THE NUMBER OF YOUR

01:55PM 22 SEPARATE SHAREHOLDERS RESULTING FROM MY INVESTMENT TO ONE."

01:55PM 23 MR. MOSLEY, IS THIS THE INSTANCE WHEN YOU INFORMED

01:55PM 24 MS. HOLMES OF YOUR DECISION TO INVEST?

01:55PM 25 A. I BELIEVE IT IS.

01:55PM 1 Q. AND HOW ABOUT THE DOLLAR AMOUNT? HOW DID YOU COME UP WITH  
01:55PM 2 THAT DOLLAR AMOUNT? WHY DID YOU INVEST \$6 MILLION?

01:55PM 3 A. IT WAS, IT WAS JUST A LEVEL OF INVESTMENT THAT I WAS  
01:55PM 4 COMFORTABLE WITH UNDER THE CIRCUMSTANCES.

01:56PM 5 Q. AND ABOVE MS. HOLMES RESPONDS TO YOU ON THE 23RD OF  
01:56PM 6 OCTOBER, AND IN IT, IN THE THIRD LINE, SHE WRITES, "WE HAVE  
01:56PM 7 SPENT A LOT OF TIME ON HOW WE'RE SIZING THIS TRANSACTION AND  
01:56PM 8 WHO WE'RE BRINGING IN AND I CAN HEREIN CONFIRM THE ALLOCATIONS  
01:56PM 9 FOR YOU, ANDREAS, AND THE COXES, IN ADDITION TO THE DEVOS  
01:56PM 10 COMMITMENT AT THE NUMBERS BELOW. WE WILL FOLLOW UP TOMORROW ON  
01:56PM 11 PAPERWORK THERE."

01:56PM 12 DO YOU SEE THAT?

01:56PM 13 A. I DO.

01:56PM 14 Q. AND THERE'S A REFERENCE TO A FEW OTHER INDIVIDUALS,  
01:56PM 15 ANDREAS, THE COXES, AND DEVOS?

01:56PM 16 A. RIGHT.

01:56PM 17 Q. GO THROUGH THOSE WITH ME. WHO IS ANDREAS?

01:56PM 18 A. ANDREAS WAS A PERSONAL FRIEND OF MINE AND A CLIENT AT THE  
01:56PM 19 TIME.

01:56PM 20 Q. AND COX, IS THAT -- WE WERE TALKING ABOUT --

01:56PM 21 A. COX WAS A CLIENT, RIGHT, WHO WAS INDEPENDENTLY LOOKING AT  
01:56PM 22 THIS AS AN INVESTMENT.

01:56PM 23 AND THE DEVOS FAMILY WAS A CLIENT OF MINE THAT WAS ALSO  
01:57PM 24 INDEPENDENTLY LOOKING AT THIS AS A POSSIBLE INVESTMENT.

01:57PM 25 Q. OKAY. I'M NOT SURE IF I MISSED IT. WAS ANDREAS A CLIENT

01:57PM 1

OF YOURS?

01:57PM 2

A. HE WAS. HE WAS A CLIENT.

01:57PM 3

Q. I SEE. SO ALL THREE OF THESE INDIVIDUALS ARE CURRENT

01:57PM 4

CLIENTS AT THE TIME?

01:57PM 5

A. THAT'S CORRECT.

01:57PM 6

Q. DID YOU PLAY A ROLE IN THEIR INVESTMENT DECISION?

01:57PM 7

MS. HOLMES IS CONFIRMING THEIR ALLOCATIONS, THEIR INVESTMENT

01:57PM 8

ALLOCATIONS. I'M WONDERING IF YOU PLAYED A ROLE IN THEIR

01:57PM 9

INVESTMENT DECISION PROCESS.

01:57PM 10

MR. CAZARES: OBJECTION. FOUNDATION.

01:57PM 11

THE COURT: YOU'RE ASKING IF HE HAD ANYTHING TO DO

01:57PM 12

WITH THEIR DECISION?

01:57PM 13

MR. SCHENK: YES.

01:57PM 14

THE COURT: OVERRULED.

01:57PM 15

YOU CAN ANSWER.

01:57PM 16

THE WITNESS: I DID NOT.

01:57PM 17

BY MR. SCHENK:

01:57PM 18

Q. WOULD YOU NOW TURN TO TAB 4286.

01:58PM 19

MR. MOSLEY, IS 4286 AN EMAIL FROM MR. BALWANI TO YOU AND A

01:58PM 20

CC TO MS. HOLMES?

01:58PM 21

A. YES.

01:58PM 22

Q. AND IS IT DATED OCTOBER 24TH, 2014?

01:58PM 23

A. IT IS.

01:58PM 24

MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4286.

01:58PM 25

MR. CAZARES: NO OBJECTION.

01:58PM 1 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

01:58PM 2 (GOVERNMENT'S EXHIBIT 4286 WAS RECEIVED IN EVIDENCE.)

01:58PM 3 BY MR. SCHENK:

01:58PM 4 Q. MR. MOSLEY, DOES MR. BALWANI WRITE TO YOU, "DEAR DAN.

01:58PM 5 "I HOPE YOU ARE DOING WELL.

01:58PM 6 "FOLLOWING ELIZABETH'S EMAIL, PLEASE FIND THE DOCUMENTS

01:58PM 7 ATTACHED FOR THE THERANOS SHARE ALLOCATIONS FOR YOU, ANDREAS,

01:58PM 8 AND THE COX FAMILY."

01:58PM 9 AND THEN IT CONTINUES WITH SOME DISCUSSION OF SIGNATURE

01:58PM 10 PAGES.

01:58PM 11 DO YOU SEE THAT?

01:58PM 12 A. I DO.

01:58PM 13 Q. AND THEN TWO PARAGRAPHS DOWN IT INCLUDES FILE NAMES AND IT

01:59PM 14 REFERENCES SOFT COPIES OF INVESTMENT DOCUMENTS YOU ALREADY HAVE

01:59PM 15 IN THE INVESTMENT BINDER ALONG WITH SIGNATURE PAGES.

01:59PM 16 DO YOU SEE THAT?

01:59PM 17 A. I DO.

01:59PM 18 Q. AND THEN AFTER THIS PAGE OF THE EXHIBIT, DO YOU SEE SOME

01:59PM 19 PRINTED MATERIALS THAT WERE ATTACHED BEGINNING, IT LOOKS LIKE,

01:59PM 20 ON PAGE 3?

01:59PM 21 A. I SEE THE TERMS.

01:59PM 22 Q. YOU SEE THEM?

01:59PM 23 A. YES.

01:59PM 24 Q. AND WHAT ARE THESE?

01:59PM 25 A. THE FIRST ONE IS THE AMENDED AND RESTATED INVESTORS'

01:59PM 1 RIGHTS AGREEMENT DATED FEBRUARY 7TH, 2014.

01:59PM 2 Q. AND THEN IF YOU'LL TURN -- I HAVE A QUESTION ON PAGE 60.

01:59PM 3 THIS IS SORT OF IN THE MIDDLE OF THE DOCUMENT.

01:59PM 4 DO YOU KNOW WHAT, IF YOU LOOK AT PAGE 54, THAT IS?

02:00PM 5 A. I SEE IT.

02:00PM 6 Q. WHAT IS PAGE 54 THE BEGINNING OF?

02:00PM 7 A. IT'S THE BEGINNING OF A STOCK PURCHASE AGREEMENT INVOLVING

02:00PM 8 SERIES C-2 PREFERRED STOCK.

02:00PM 9 Q. AND DID YOU REVIEW THIS AGREEMENT BEFORE PURCHASING SERIES

02:00PM 10 C-2 STOCK?

02:00PM 11 A. I DID.

02:00PM 12 Q. AND IF YOU'LL TURN TO PAGE 60, I HAVE A COUPLE OF

02:00PM 13 QUESTIONS ON SECTION IN THE PURCHASE AGREEMENT?

02:00PM 14 A. OKAY.

02:00PM 15 Q. 4.3 IS ENTITLED INVESTMENT EXPERIENCE.

02:00PM 16 DO YOU SEE THAT?

02:00PM 17 A. I DO.

02:00PM 18 Q. AND DID YOU HAVE THE INVESTMENT EXPERIENCE THAT WAS

02:00PM 19 NECESSARY TO MAKE THIS INVESTMENT?

02:00PM 20 A. I DID.

02:00PM 21 Q. 4.4 REFERS TO THE SPECULATIVE NATURE OF THE INVESTMENT.

02:00PM 22 DO YOU SEE THAT?

02:00PM 23 A. I DO.

02:00PM 24 Q. AND DID YOU UNDERSTAND THAT THIS INVESTMENT WAS

02:00PM 25 SPECULATIVE?

02:00PM 1 A. I DID.

02:00PM 2 Q. AND IT SAYS IT INVOLVED SUBSTANTIAL RISKS.

02:00PM 3 DID YOU SEE THAT ALSO?

02:00PM 4 A. I DID.

02:00PM 5 Q. IN FACT, IN YOUR OUTLINE FOR DR. KISSINGER, DID YOU

02:01PM 6 OUTLINE SOME OF THE RISKS THAT YOU SAW IN THE INVESTMENT?

02:01PM 7 A. I DID.

02:01PM 8 Q. 4.5 IS A SECTION THAT INVOLVES ACCESS TO DATA.

02:01PM 9 DO YOU SEE THAT?

02:01PM 10 A. I DO.

02:01PM 11 Q. AND DID YOU THINK THAT THIS WAS TRUE? IN OTHER WORDS, DID

02:01PM 12 YOU HAVE ACCESS TO CERTAIN DATA, BUT NOT ALL DATA, WHEN YOU

02:01PM 13 MADE THE INVESTMENT DECISION?

02:01PM 14 A. I DID.

02:01PM 15 Q. WHEN YOU RECEIVED THE BINDERS OF INFORMATION THAT YOU AND

02:01PM 16 I LOOKED THROUGH, DID YOU THINK THAT THAT WAS SOME OF THE

02:01PM 17 INFORMATION OR SOME OF THE DATA THAT WAS PART OF THE

02:01PM 18 INFORMATION THAT THE COMPANY WAS PROVIDING FOR YOU TO EVALUATE

02:01PM 19 WHEN MAKING AN INVESTMENT DECISION?

02:01PM 20 A. I DID.

02:01PM 21 Q. 4.6 IS CALLED ACCREDITED INVESTOR.

02:01PM 22 ARE YOU FAMILIAR WITH THAT TERM?

02:01PM 23 A. I AM.

02:01PM 24 Q. AND WERE YOU AN ACCREDITED INVESTOR WHEN YOU MADE THE

02:01PM 25 INVESTMENT?



02:01PM 1 A. YES, I WAS.

02:01PM 2 Q. WOULD YOU TURN TO PAGE 73.

02:02PM 3 ON PAGE 73, ABOVE TWO LINES THAT HAVE THE PRINTED NAME

02:02PM 4 ELIZABETH HOLMES, DO YOU SEE SIGNATURES?

02:02PM 5 A. I DO.

02:02PM 6 Q. AND DID YOU RECEIVE THESE SIGNED VERSIONS FROM MS. HOLMES

02:02PM 7 BEFORE YOU MADE YOUR INVESTMENT DECISION?

02:02PM 8 A. I BELIEVE I DID.

02:02PM 9 Q. IF YOU'LL NOW TURN TO PAGE -- I'M SORRY, EXHIBIT 4303.

02:02PM 10 MR. MOSLEY, IS 4303 AN EMAIL FROM YOU TO MS. HOLMES AND

02:02PM 11 MR. BALWANI?

02:02PM 12 A. YES, IT IS.

02:02PM 13 Q. WITH SOME ATTACHMENTS?

02:02PM 14 A. CORRECT.

02:02PM 15 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 4303.

02:02PM 16 MR. CAZARES: NO OBJECTION.

02:02PM 17 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

02:02PM 18 (GOVERNMENT'S EXHIBIT 4303 WAS RECEIVED IN EVIDENCE.)

02:02PM 19 MR. SCHENK: THANK YOU.

02:02PM 20 Q. MR. MOSLEY, IT LOOKS LIKE NOW ON OCTOBER 30TH OF 2014

02:03PM 21 YOU'RE SENDING MS. HOLMES AND MR. BALWANI WHAT ARE CALLED

02:03PM 22 MASTER SIGNATURE PAGES.

02:03PM 23 DO YOU SEE THAT?

02:03PM 24 A. I DO.

02:03PM 25 Q. AND WHY DID YOU SEND THEM THESE DOCUMENTS?

02:03PM 1 A. WELL, THESE WERE DOCUMENTS THAT WERE NECESSARY IN ORDER TO  
02:03PM 2 MAKE THE INVESTMENT.

02:03PM 3 Q. IF YOU'LL TURN TO PAGE 2 OF THE EXHIBIT.  
02:03PM 4 IS THIS YOUR SIGNATURE PAGE?

02:03PM 5 A. YES. WELL, IT'S A SIGNATURE PAGE FOR THE ENTITY THROUGH  
02:03PM 6 WHICH I INVESTED.

02:03PM 7 Q. THANK YOU. THE LLC THROUGH WHICH YOU MADE THE INVESTMENT?  
02:03PM 8 A. THAT'S CORRECT.

02:03PM 9 Q. AND TO BE CLEAR, THERE'S AN ADDRESS HERE. THAT'S A WORK  
02:03PM 10 ADDRESS; RIGHT?

02:03PM 11 A. YES, IT IS.

02:03PM 12 Q. AND THEN THE NEXT PAGE IS ANOTHER SIGNATURE PAGE.  
02:03PM 13 WHY WERE YOU SENDING MR. DRACOPOULOS'S SIGNATURE PAGE TO  
02:03PM 14 MS. HOLMES AND MR. BALWANI?

02:03PM 15 A. HE ASKED ME, ARE YOU SENDING YOUR PAGE?  
02:03PM 16 AND I SAID YES.

02:03PM 17 AND HE SAID, DO YOU MIND SENDING MINE AT THE SAME TIME?  
02:04PM 18 AND I SAID I WOULD BE HAPPY TO.

02:04PM 19 Q. AND SO YOU DID HIM THAT FAVOR?  
02:04PM 20 A. RIGHT.

02:04PM 21 Q. I WANT YOU TO TURN TO TAB 2172. IT'S TOWARDS THE FRONT OF  
02:04PM 22 YOUR BINDER.

02:04PM 23 A. I'M THERE.

02:04PM 24 Q. MR. MOSLEY, DO YOU RECOGNIZE THIS DOCUMENT?  
02:04PM 25 A. I DO.

02:04PM 1 Q. AND WHAT IS THIS DOCUMENT?

02:04PM 2 A. THIS IS THE DOCUMENT THAT I REFERRED TO DEALING WITH THAT  
02:04PM 3 PARTICULAR PROVISION IN THE CERTIFICATE OF INCORPORATION OF THE  
02:04PM 4 COMPANY RELATING TO THE RIGHT TO REDEEM PREFERRED STOCK, OR  
02:04PM 5 REDEEM STOCK PERIOD.

02:04PM 6 Q. AND THE DATE ON THIS DOCUMENT?

02:05PM 7 A. OCTOBER 31, 2014.

02:05PM 8 Q. AND IS THAT THE DATE OF THE ELECTRONIC WIRE THAT YOU SENT  
02:05PM 9 FUNDS?

02:05PM 10 A. IT WAS THAT DATE.

02:05PM 11 Q. I'M SORRY, THE ANSWER?

02:05PM 12 A. IT WAS THAT DATE.

02:05PM 13 MR. SCHENK: THANK YOU.

02:05PM 14 YOUR HONOR, THE GOVERNMENT OFFERS 2172.

02:05PM 15 MR. CAZARES: NO OBJECTION.

02:05PM 16 THE COURT: IT'S ADMITTED, AND IT MAY BE PUBLISHED.

02:05PM 17 (GOVERNMENT'S EXHIBIT 2172 WAS RECEIVED IN EVIDENCE.)

02:05PM 18 MR. SCHENK: THANK YOU.

02:05PM 19 Q. MR. MOSLEY, THE LETTER MAKES REFERENCE TO YOUR CLIENTS.

02:05PM 20 DO YOU SEE THAT?

02:05PM 21 A. YES.

02:05PM 22 Q. AND I THINK YOU MAY HAVE DESCRIBED THIS EARLIER.

02:05PM 23 WHY DID YOU HAVE THIS AGREEMENT COVER NOT JUST YOURSELF,  
02:05PM 24 BUT ALSO YOUR CLIENTS?

02:05PM 25 A. AS I POINTED OUT, I KNEW THAT SOME OF MY CLIENTS WERE

02:05PM 1 LOOKING AT THE COMPANY AS A POSSIBLE INVESTMENT AND CONSIDERING  
02:05PM 2 IT.

02:05PM 3 I CERTAINLY NEVER WOULD HAVE BEEN COMFORTABLE OBTAINING  
02:05PM 4 THIS KIND OF COMFORT FOR MYSELF PERSONALLY WITHOUT IT HAVING --  
02:05PM 5 EXTENDING TO EVERYBODY ELSE THAT I KNEW MIGHT BE LOOKING AT THE  
02:06PM 6 COMPANY.

02:06PM 7 Q. THANK YOU.

02:06PM 8 ON OCTOBER 31ST OF 2014, DID YOU WIRE, DID YOU  
02:06PM 9 ELECTRONICALLY WIRE FUNDS TO THERANOS?

02:06PM 10 A. I DID.

02:06PM 11 Q. DO YOU RECALL THE AMOUNT?

02:06PM 12 A. IT WAS JUST SLIGHTLY UNDER \$6 MILLION.

02:06PM 13 Q. AND WHEN YOU INITIATED THAT WIRE, WHERE WERE YOU?  
02:06PM 14 PHYSICALLY, WHERE WERE YOU?

02:06PM 15 A. I BELIEVE I WAS IN NEW YORK CITY.

02:06PM 16 Q. AND YOU SENT THAT TO THERANOS; IS THAT RIGHT?

02:06PM 17 A. I DID.

02:06PM 18 WELL, THE WIRE WAS TO THEIR BANK, WHICH I THINK WAS  
02:06PM 19 SILICON VALLEY OR SOMETHING LIKE THAT.

02:06PM 20 Q. THE WIRE WAS FROM YOUR BANK TO THERANOS'S --

02:06PM 21 A. YES.

02:06PM 22 Q. -- BANK?

02:06PM 23 THANK YOU.

02:06PM 24 IF YOU'LL NOW TURN, I THINK IT'S ONE TAB BEFORE THAT, IN  
02:06PM 25 YOUR BINDER TO 2065.

02:06PM 1 DO YOU SEE THAT EXHIBIT?

02:06PM 2 A. I DO.

02:06PM 3 Q. MR. MOSLEY, YOU'RE NOT ON THIS EMAIL; IS THAT CORRECT?

02:06PM 4 A. I AM NOT.

02:07PM 5 Q. DO YOU KNOW -- THERE'S AN INDIVIDUAL HERE LISTED,

02:07PM 6 CHRISTIAN HOLMES.

02:07PM 7 DO YOU KNOW WHO THAT IS?

02:07PM 8 A. I DO.

02:07PM 9 Q. AND WHO WAS THAT?

02:07PM 10 A. THAT WAS ELIZABETH HOLMES'S BROTHER.

02:07PM 11 Q. AND DO YOU KNOW WHERE HE WORKED?

02:07PM 12 A. I BELIEVE HE WORKED AT THERANOS, BUT I DON'T KNOW FOR

02:07PM 13 SURE, BUT I BELIEVE HE DID.

02:07PM 14 Q. AND DO YOU KNOW -- DO YOU RECALL WHETHER YOU EVER HAD

02:07PM 15 INTERACTIONS WITH MR. HOLMES?

02:07PM 16 A. CHRISTIAN HOLMES?

02:07PM 17 Q. YES.

02:07PM 18 A. I DID MEET HIM ON ONE OR MORE OCCASIONS, MAYBE JUST ONE

02:07PM 19 OCCASION.

02:07PM 20 Q. AND WHEN WAS THAT?

02:07PM 21 A. IT WAS AT THE BDT CONFERENCE I ATTENDED AND WHICH

02:07PM 22 ELIZABETH ATTENDED.

02:07PM 23 Q. THE ONE IN CHICAGO THAT WE SAW THE EMAIL ABOUT?

02:07PM 24 A. THAT'S CORRECT.

02:07PM 25 MR. SCHENK: YOUR HONOR, THE GOVERNMENT OFFERS 2065.

02:07PM 1 MR. CAZARES: OBJECTION. FOUNDATION, HEARSAY, 403.

02:07PM 2 THE COURT: THIS WOULD BE ADMITTED FOR NOTICE

02:07PM 3 PURPOSES ONLY, NOT FOR THE TRUTH OF THE MATTER ASSERTED,

02:07PM 4 MR. SCHENK?

02:08PM 5 MR. SCHENK: YES, YOUR HONOR.

02:08PM 6 THE COURT: ALL RIGHT. THANK YOU.

02:08PM 7 I'LL OVERRULE THE OBJECTIONS.

02:08PM 8 LADIES AND GENTLEMEN, THIS DOCUMENT WILL BE ADMITTED,

02:08PM 9 AGAIN, ONLY AS TO THE ISSUE OF NOTICE, NOTICE AS TO THE

02:08PM 10 INDIVIDUALS MENTIONED ON THE EMAIL, THAT IS, TO/FROM, AND NOT

02:08PM 11 FOR THE TRUTH OF THE MATTERS ASSERTED IN THE EMAIL.

02:08PM 12 IT'S ADMITTED, AND IT MAY BE PUBLISHED.

02:08PM 13 (GOVERNMENT'S EXHIBIT 2065 WAS RECEIVED IN EVIDENCE.)

02:08PM 14 MR. SCHENK: THANK YOU VERY MUCH, YOUR HONOR.

02:08PM 15 Q. MR. MOSLEY, I'D LIKE TO START ON PAGE 2, AND THEN WE'LL

02:08PM 16 WORK OUR WAY UP THROUGH THE EMAIL.

02:08PM 17 DO YOU SEE ON PAGE 2 AN EMAIL FROM CHRISTIAN HOLMES TO

02:08PM 18 ELIZABETH HOLMES AND SUNNY BALWANI?

02:08PM 19 A. I DO.

02:08PM 20 Q. AND THIS EMAIL IS DATED OCTOBER 9TH, 2014.

02:08PM 21 SO A MOMENT AGO YOU AND I WERE TALKING ABOUT YOUR

02:08PM 22 INVESTMENT ON OCTOBER 31ST; IS THAT CORRECT?

02:08PM 23 A. THAT'S CORRECT.

02:08PM 24 Q. AND THIS EMAIL WAS SENT, IT APPEARS, A FEW WEEKS BEFORE

02:08PM 25 THAT?

02:08PM 1 A. CORRECT.

02:08PM 2 Q. DO YOU SEE THAT MR. HOLMES WRITES, "WHERE CAN I FIND THE

02:08PM 3 LIST OF NAMES YOU MENTIONED FROM BDT WHO COULD COME INTO WAG ON

02:09PM 4 SATURDAY?"

02:09PM 5 DO YOU SEE THAT?

02:09PM 6 A. I SEE THAT.

02:09PM 7 Q. AND THEN IT CONTINUES. "WE WILL SEND OVER THE DIFFERENT

02:09PM 8 WORK FLOWS FOR HOW WE WILL ACCOMMODATE FINGERSTICK REGARDLESS

02:09PM 9 OF WHAT'S ON THE ORDER, AND POSSIBLE ISSUES ASSOCIATED, AS

02:09PM 10 REQUESTED."

02:09PM 11 DID I READ THAT CORRECTLY?

02:09PM 12 A. YES, YOU DID.

02:09PM 13 Q. AND THEN I WOULD LIKE TO GO UP ONE EMAIL, BUT CAN YOU SEE

02:09PM 14 THE SCREEN -- THE FROM LINE IS CUT OFF ON THE TOP OF THIS

02:09PM 15 EMAIL? IT INCLUDES A SENT TO AND A CC, BUT NO FROM LINE?

02:09PM 16 A. I SEE THAT.

02:09PM 17 Q. IF YOU'LL TURN TO THE FIRST PAGE AT THE VERY BOTTOM, DO

02:09PM 18 YOU SEE ON THE FIRST PAGE AT THE VERY BOTTOM, DO YOU SEE A FROM

02:09PM 19 LINE?

02:09PM 20 A. I DO.

02:09PM 21 Q. THE EMAIL APPEARS TO BE FROM MR. BALWANI; IS THAT RIGHT?

02:09PM 22 A. CORRECT.

02:09PM 23 Q. IF NOW WE CAN TURN BACK TO THAT SECOND PAGE.

02:09PM 24 THAT SAME DAY, OCTOBER 9TH, MR. BALWANI WRITES, "DIANA.

02:09PM 25 CAN YOU SEND CHRISTIAN LIST OF 4 PEOPLE FROM BDT WHO VISITED US

02:10PM 1 FEW DAYS BACK THIS WAS BYRON TROTT AND HIS TEAM."

02:10PM 2 DO YOU SEE THAT?

02:10PM 3 A. I DO.

02:10PM 4 Q. AND NOW IF WE CAN GO TO THE FIRST PAGE AND LOOK AT THE  
02:10PM 5 LENGTHY EMAIL IN RESPONSE.

02:10PM 6 AT THE VERY TOP, MR. HOLMES WRITES TO MR. BALWANI AND  
02:10PM 7 ELIZABETH HOLMES IT APPEARS ON THE NEXT DAY, ON OCTOBER 10TH.

02:10PM 8 DO YOU SEE THAT?

02:10PM 9 A. I DO.

02:10PM 10 Q. AND MR. HOLMES WRITES, "ALSO WANTED TO SEND ALONG OUR  
02:10PM 11 THOUGHTS FOR HOW TO ACCOMPLISH THE FS IN" THIS SCENARIO, THEIR  
02:10PM 12 ORDERS PROMPT VENOUS.

02:10PM 13 I'M SORRY. LET ME REREAD THAT.

02:10PM 14 "ALSO WANTED TO SEND ALONG OUR THOUGHTS FOR HOW TO  
02:10PM 15 ACCOMPLISH THE FS IN THE SCENARIO THEIR ORDERS PROMPT VENOUS.  
02:10PM 16 ASSUMPTIONS HERE FROM EAH ARE THAT WE MUST NOT DO VENOUS DRAW  
02:10PM 17 AND WE CANNOT TELL THEM THAT THEIR ORDER PROMPTS VENOUS IF IT  
02:11PM 18 DOES. THE FOLLOWING IS THE ACTION PLANNING TO ACCOMPLISH  
02:11PM 19 THIS."

02:11PM 20 DO YOU SEE THAT, MR. MOSLEY?

02:11PM 21 A. I DO.

02:11PM 22 Q. AND NOW IF YOU'LL LOOK DOWN WITH ME, THERE'S A SECTION  
02:11PM 23 CALLED PREP ACTIONS.

02:11PM 24 THE FIRST BULLET OR DASH, "ANAM/ROBIN HAVE LIST OF NAMES  
02:11PM 25 WHICH INCLUDES POSSIBLE PATIENTS FROM BDT."



02:11PM 1 DO YOU SEE THAT?

02:11PM 2 A. I DO.

02:11PM 3 Q. AND NOW IF WE LOOK AT SCENARIO 1, THE NEXT SECTION, IT

02:11PM 4 READS, "SCENARIO 1: SCANNED ORDER FROM BDT VIP CONTAINS TESTS

02:11PM 5 THAT PROMPT FOR VENOUS DRAW."

02:11PM 6 THE SECOND DASH, "USE CASE A: VENOUS IS PROMPTED DUE TO

02:11PM 7 SOME TESTS NOT YET BEING ON FS, BUT WOULD OTHERWISE PROMPT FS.

02:12PM 8 "REMOVE TESTS THAT ARE NOT YET ON FS AND COMPLETE

02:12PM 9 TRANSCRIPTION.

02:12PM 10 "VISIT IS COMPLETED PER SOP."

02:12PM 11 AND THEN A SECTION CALLED "NEGATIVES."

02:12PM 12 THE FIRST BULLET, "NEED TO EITHER TELL THE PATIENT AT THE

02:12PM 13 STORE THAT WE WILL NOT RUN A FEW TESTS, OR TELL THEM ON THE

02:12PM 14 BACK END THAT WE COULD NOT RUN CERTAIN TESTS."

02:12PM 15 DO YOU SEE THAT, SIR?

02:12PM 16 A. I DO.

02:12PM 17 Q. AND NOW IF WE LOOK FURTHER DOWN, "USE CASE B: VENOUS IS

02:12PM 18 PROMPTED DUE TO VOLUME OF TESTS BUT TESTS WOULD PROMPT FS IF

02:12PM 19 ORDERED INDIVIDUALLY."

02:12PM 20 THE FIRST DASH, "REMOVE ENOUGH TESTS IN SM TO ALLOW THE

02:12PM 21 PATIENT TO PROCEED WITH FS."

02:12PM 22 AND IF YOU LOOK AT NEGATIVES, THE SECOND BULLET READS, "IF

02:12PM 23 THEY NOTICE MISSING TESTS ON THE RECEIPT, THEY MAY ASK THE WAG

02:12PM 24 TECH ABOUT IT. WORST CASE THEY WOULD MAKE A CALL TO CS AND

02:13PM 25 ANAM WOULD TELL THEM EVERYTHING IS FINE. CIARA WILL ALSO BE

02:13PM 1 ABLE TO COME OUT OF THE DRAW ROOM ONCE CHECK-IN IS COMPLETE TO  
02:13PM 2 WELCOME THEM INTO THE ROOM AND DISTRACT FROM LOOKING AT THE  
02:13PM 3 RECEIPT."

02:13PM 4 DID I READ THAT CORRECTLY?

02:13PM 5 A. YOU DID.

02:13PM 6 Q. MR. MOSLEY, I WANT TO ASK YOU ONE QUESTION ABOUT  
02:13PM 7 EXHIBIT 3387 -- THIS HAS BEEN PREVIOUSLY ADMITTED,  
02:13PM 8 YOUR HONOR -- PAGE 512.

02:13PM 9 PERMISSION TO PUBLISH?

02:13PM 10 THE COURT: YES.

02:13PM 11 BY MR. SCHENK:

02:13PM 12 Q. MR. MOSLEY, DO YOU RECALL THIS EXHIBIT THAT YOU AND I  
02:13PM 13 SPOKE ABOUT A MOMENT AGO?

02:13PM 14 A. I DO.

02:13PM 15 Q. WE TALKED ABOUT TWO MEETINGS THAT YOU HAD IN AROUND  
02:13PM 16 OCTOBER OF 2014 IN PALO ALTO.

02:13PM 17 DO YOU RECALL THAT?

02:13PM 18 A. YES.

02:13PM 19 Q. DO YOU WANT ME TO GIVE YOU A MOMENT TO GET TO THE PAGE?

02:13PM 20 A. NO. I CAN SEE IT ON THE SCREEN. THAT'S FINE.

02:13PM 21 Q. OKAY. I WONDER IF, AFTER THAT, AFTER OCTOBER OF 2014, DID  
02:14PM 22 YOU HAVE THE OCCASION TO BE ON A CONFERENCE CALL WHERE  
02:14PM 23 MS. HOLMES AND MR. BALWANI WERE PRESENT IN 2015?

02:14PM 24 A. NOT THAT I RECALL WHERE THEY WERE BOTH PRESENT ON A  
02:14PM 25 PARTICULAR CALL.

02:14PM 1 Q. WERE THERE INSTANCES WHEN YOU WERE ON A CONFERENCE CALL  
02:14PM 2 WITH JUST MR. BALWANI?

02:14PM 3 A. WELL, JUST WITH MR. BALWANI FROM THE COMPANY AND OTHER  
02:14PM 4 INDIVIDUALS, YES.

02:14PM 5 Q. THANK YOU.

02:14PM 6 IN 2015, WERE YOU ON A CONFERENCE CALL WHERE THE ONLY  
02:14PM 7 REPRESENTATIVE THAT YOU WERE AWARE OF FROM THERANOS WAS  
02:14PM 8 MR. BALWANI?

02:14PM 9 A. THAT'S CORRECT.

02:14PM 10 Q. AND IN 2015 WHEN YOU WERE HAVING THIS CALL, DID  
02:14PM 11 MR. BALWANI MAKE ANY STATEMENTS TO YOU THAT THE NUMBERS IN  
02:14PM 12 2014, WHAT LOOKS TO BE TOTAL REVENUE OF \$140 MILLION, DID NOT  
02:14PM 13 COME THROUGH?

02:14PM 14 A. HE DID NOT.

02:14PM 15 Q. SO IN 2015 WHEN YOU WERE ON A CONFERENCE CALL WITH  
02:15PM 16 MR. BALWANI, DID YOU DISCUSS THE FINANCES, THE FINANCIAL  
02:15PM 17 SITUATION AT THERANOS?

02:15PM 18 A. I BELIEVE THE FINANCES WERE DISCUSSED, BUT I DON'T HAVE  
02:15PM 19 ANY SPECIFIC RECOLLECTION OF DETAILS.

02:15PM 20 Q. YOU DON'T HAVE A RECOLLECTION OF THE SPECIFIC DETAILS  
02:15PM 21 DISCUSSED?

02:15PM 22 A. RIGHT.

02:15PM 23 Q. DO YOU HAVE A RECOLLECTION THAT MR. BALWANI SAID, I NEED  
02:15PM 24 TO REFINE THE NUMBER THAT WE PROVIDED TO YOU IN 2014, AND NOW  
02:15PM 25 THAT IT IS 2015, WE DIDN'T HIT 100 MILLION IN REVENUE?

02:15PM 1 MR. CAZARES: OBJECTION. LEADING, ASKED AND  
02:15PM 2 ANSWERED.

02:15PM 3 THE COURT: OVERRULED.

02:15PM 4 WHY DON'T YOU ASK THE QUESTION AGAIN?

02:15PM 5 THE WITNESS: I SAID THANKS FOR READING THE QUESTION  
02:15PM 6 AGAIN.

02:15PM 7 BY MR. SCHENK:

02:15PM 8 Q. IN 2015 ON THIS CALL WHERE MR. BALWANI WAS PRESENT, I  
02:15PM 9 THINK YOU SAID THAT FINANCES WERE DISCUSSED.

02:15PM 10 A. YES.

02:15PM 11 Q. AND I'M WONDERING IF THERE WAS AN OCCASION ON THE CALL  
02:15PM 12 WHEN MR. BALWANI SAID, THE FINANCIAL PROJECTIONS WE HAVE  
02:15PM 13 PROVIDED TO YOU IN 2014 REGARDING 2014 NEED TO BE REFINED OR  
02:16PM 14 CORRECTED.

02:16PM 15 DID THAT EVER HAPPEN?

02:16PM 16 MR. CAZARES: OBJECTION. ASKED AND ANSWERED.

02:16PM 17 THE COURT: OVERRULED.

02:16PM 18 THE WITNESS: NO.

02:16PM 19 BY MR. SCHENK:

02:16PM 20 Q. AND THEN SAME QUESTION FOR 2015. YOU'RE HAVING THIS CALL  
02:16PM 21 IN 2015. DID MR. BALWANI SAY, OUR 2015 PROJECTIONS, THE ONE  
02:16PM 22 THAT PREDICTS ABOUT A BILLION DOLLARS IN REVENUE, DID THAT GET  
02:16PM 23 REFINED?

02:16PM 24 MR. CAZARES: OBJECTION. FOUNDATION.

02:16PM 25 THE COURT: DURING THE CONVERSATION?

02:16PM 1 MR. SCHENK: YES, YOUR HONOR.

02:16PM 2 THE COURT: ALL RIGHT.

02:16PM 3 YOU CAN ANSWER THE QUESTION.

02:16PM 4 THE WITNESS: NO.

02:16PM 5 MR. SCHENK: YOUR HONOR, MAY I HAVE ONE MOMENT?

02:16PM 6 THE COURT: YES.

02:16PM 7 (DISCUSSION AMONGST GOVERNMENT COUNSEL OFF THE RECORD.)

02:16PM 8 MR. LEACH: THANK YOU VERY MUCH, YOUR HONOR. NO

02:16PM 9 FURTHER QUESTIONS.

02:16PM 10 THE COURT: WHY DON'T WE TAKE OUR BREAK, LADIES AND

02:16PM 11 GENTLEMEN, ABOUT 20, 25 MINUTES, AND THEN YOU'LL HAVE

02:16PM 12 CROSS-EXAMINATION.

02:16PM 13 MR. CAZARES: YES, YOUR HONOR.

02:16PM 14 THE COURT: ALL RIGHT. WE'LL TAKE OUR SECOND BREAK,

02:16PM 15 SIR, AND THEN WE'LL ENGAGE AGAIN.

02:17PM 16 (RECESS FROM 2:17 P.M. UNTIL 2:47 P.M.)

02:49PM 17 THE COURT: WE'RE BACK ON THE RECORD. ALL PARTIES

02:49PM 18 PREVIOUSLY PRESENT ARE PRESENT AGAIN.

02:49PM 19 COUNSEL, YOU HAVE CROSS-EXAMINATION?

02:49PM 20 MR. CAZARES: YES, YOUR HONOR. THANK YOU VERY MUCH,

02:49PM 21 YOUR HONOR.

02:49PM 22 **CROSS-EXAMINATION**

02:49PM 23 BY MR. CAZARES:

02:49PM 24 Q. GOOD AFTERNOON, MR. MOSLEY. MY NAME IS STEVE CAZARES, AND

02:49PM 25 I REPRESENT MR. BALWANI.

02:49PM 1 I JUST HAVE A FEW QUESTIONS FOR YOU THIS AFTERNOON.

02:49PM 2 A. OKAY.

02:49PM 3 Q. WILL THAT BE OKAY?

02:49PM 4 JUST TO GET BACK TO A LITTLE BIT OF BACKGROUND FOR

02:49PM 5 CONTEXT.

02:49PM 6 SO YOU CURRENTLY WORK AT THE INVESTMENT FIRM BDT; IS THAT

02:49PM 7 RIGHT?

02:49PM 8 A. THAT'S CORRECT.

02:49PM 9 Q. AND YOU'VE BEEN AT BDT NOW FOR A FEW YEARS; CORRECT?

02:49PM 10 A. A LITTLE OVER FOUR YEARS.

02:49PM 11 Q. AT BDT, YOU WORK WITH MR. TROTT; IS THAT CORRECT?

02:49PM 12 A. YES, I DO.

02:49PM 13 Q. AND MR. TROTT HAS DECADES OF EXPERIENCE IN INVESTMENT AND

02:49PM 14 FINANCE; CORRECT?

02:50PM 15 A. YES, HE DOES.

02:50PM 16 Q. OKAY. AND YOU YOURSELF HAVE YEARS OF EXPERIENCE RELATING

02:50PM 17 TO INVESTMENTS BOTH ON BEHALF OF YOURSELF AND YOUR FAMILY;

02:50PM 18 CORRECT?

02:50PM 19 A. I DO.

02:50PM 20 Q. INCLUDING PUBLIC COMPANY INVESTING?

02:50PM 21 A. YES.

02:50PM 22 Q. AS WELL AS PRIVATE COMPANY INVESTING PRIOR TO YOUR

02:50PM 23 INTRODUCTION TO THERANOS; IS THAT RIGHT?

02:50PM 24 A. THAT'S CORRECT.

02:50PM 25 Q. AND INVESTING IN PUBLIC COMPANIES VERSUS PRIVATE

02:50PM 1 COMPANIES, THEY'RE QUITE DIFFERENT; IS THAT FAIR?

02:50PM 2 A. YES.

02:50PM 3 Q. AND IN A PUBLIC COMPANY SETTING, YOU KNOW, PUBLIC

02:50PM 4 COMPANIES ARE REQUIRED TO FILE REPORTS, FINANCIAL INFORMATION,

02:50PM 5 OTHER DETAILS WITH THE SECURITIES AND EXCHANGE COMMISSION.

02:50PM 6 YOU'RE FAMILIAR WITH THAT?

02:50PM 7 A. I AM.

02:50PM 8 Q. WHEREAS IN A PRIVATE SETTING, PRIVATE COMPANIES, BY

02:50PM 9 DEFINITION, DON'T HAVE TO DISCLOSE OR REPORT ANYTHING; IS THAT

02:50PM 10 FAIR?

02:50PM 11 A. THAT IS CORRECT.

02:50PM 12 Q. OKAY. AND YOU ALSO DESCRIBED THE CIRCUMSTANCES WHERE, YOU

02:50PM 13 KNOW, YOU MAY REQUEST INFORMATION FROM THE PRIVATE COMPANY, YOU

02:50PM 14 MAY GET A RESPONSE, OR YOU MAY GET NOTHING; IS THAT ACCURATE?

02:51PM 15 A. THAT IS CORRECT.

02:51PM 16 Q. AND THEN THE PRIVATE COMPANY MAY INVITE YOUR INTEREST TO

02:51PM 17 INVEST IN A COMPANY, BUT THEY MAY DECLINE YOUR INVESTMENT; IS

02:51PM 18 THAT FAIR AS WELL?

02:51PM 19 A. THAT'S FAIR.

02:51PM 20 Q. NOW, DURING THE RELEVANT TIME PERIOD IN THIS 2014 TIME

02:51PM 21 PERIOD THAT YOU TALKED ABOUT IN YOUR CONNECTION WITH THERANOS,

02:51PM 22 YOU WERE STILL WORKING AT THE CRAVATH LAW FIRM; CORRECT?

02:51PM 23 A. I WAS.

02:51PM 24 Q. AND BY THAT TIME YOU HAD BEEN A PARTNER AT CRAVATH FOR

02:51PM 25 30 YEARS?

02:51PM 1 A. OH, I BECAME A PARTNER IN 1987. SO --

02:51PM 2 Q. ALMOST?

02:51PM 3 A. ALMOST.

02:51PM 4 Q. OKAY. AND FOR THOSE WHO DON'T KNOW, CRAVATH IS QUITE A

02:51PM 5 PRESTIGIOUS LAW FIRM; CORRECT?

02:51PM 6 A. YES.

02:51PM 7 Q. BOTH IN THE UNITED STATES AND WORLDWIDE; CORRECT?

02:51PM 8 A. THAT'S CORRECT.

02:51PM 9 Q. IT REPRESENTS SOME OF THE LARGEST, MOST SOPHISTICATED

02:51PM 10 CORPORATIONS IN THE WORLD; CORRECT?

02:52PM 11 A. THAT'S CORRECT.

02:52PM 12 Q. AND YOUR ROLE AT CRAVATH WAS IN TRUSTS AND ESTATES; IS

02:52PM 13 THAT CORRECT?

02:52PM 14 A. CORRECT.

02:52PM 15 Q. BECAUSE YOU ALSO HAD A TAX BACKGROUND AS I RECALL?

02:52PM 16 A. I DID, OR I DO.

02:52PM 17 Q. YOU RECEIVED AN LL.M., OR A MASTER'S IN, LIKE, TAXATION LAW;

02:52PM 18 IS THAT CORRECT?

02:52PM 19 A. THAT IS CORRECT.

02:52PM 20 Q. AND SO PART OF YOUR WORK WAS HELPING WEALTHY FAMILIES,

02:52PM 21 COMPANIES, KIND OF MANAGE THEIR ESTATES AND THEIR FINANCES;

02:52PM 22 CORRECT?

02:52PM 23 A. FAMILIES AND INDIVIDUALS, NOT COMPANIES.

02:52PM 24 Q. FAIR ENOUGH.

02:52PM 25 AND AMONGST YOUR CLIENTS, FAIR TO SAY SOME OF THE MOST



02:52PM 1 PROMINENT, KIND OF INDUSTRIAL FAMILIES IN AMERICA; IS THAT

02:52PM 2 FAIR?

02:52PM 3 A. THEY WERE PROMINENT FAMILIES, YES.

02:52PM 4 Q. INCLUDING, I THINK YOU MENTIONED A FEW OF THEM, THE WALTON

02:52PM 5 FAMILY?

02:52PM 6 A. YES.

02:52PM 7 Q. WHO ARE RELATED TO WAL-MART?

02:52PM 8 A. YES.

02:52PM 9 Q. AND I THINK YOU MENTIONED MORE THAN A FEW TIMES THE

02:52PM 10 DEVOS FAMILY; CORRECT?

02:52PM 11 A. I DID.

02:52PM 12 Q. AND THE DEVOS FAMILY WAS CONNECTED TO THE AMWAY BUSINESS;

02:52PM 13 IS THAT CORRECT?

02:52PM 14 A. THAT'S CORRECT.

02:52PM 15 Q. AND THEN YOU MENTIONED THE COX COMMUNICATIONS FAMILY, I'LL

02:53PM 16 CALL IT?

02:53PM 17 A. RIGHT.

02:53PM 18 Q. OKAY. AND THERE'S A MR. ALEX TAYLOR, AT LEAST CURRENTLY

02:53PM 19 AT THE HEAD OF COX; CORRECT?

02:53PM 20 A. THAT IS CORRECT.

02:53PM 21 Q. AND THOSE ARE ALL CLIENTS OF YOURS, OR WERE AT THE TIME?

02:53PM 22 A. YES, THEY WERE.

02:53PM 23 Q. AND THEN THERE'S A REFERENCE TO, IN YOUR TESTIMONY, THE

02:53PM 24 NIARCHOS FAMILY.

02:53PM 25 DO YOU REMEMBER THAT?

02:53PM 1 A. TO THE NIARCHOS FOUNDATION, YES.

02:53PM 2 Q. FOUNDATION. AND YOU DID SOME WORK FOR THE NIARCHOS

02:53PM 3 FOUNDATION?

02:53PM 4 A. I DID.

02:53PM 5 Q. AND I THINK YOU INDICATED THAT YOU WERE KIND OF A

02:53PM 6 FRIENDSHIP WITH MR. ANDREAS DRACOPOULOS; CORRECT?

02:53PM 7 A. YES, I DID.

02:53PM 8 Q. AND HE WAS RELATED TO THE NIARCHOS FAMILY I THINK BY

02:53PM 9 MARRIAGE?

02:53PM 10 A. NO. HE'S RELATED BY BLOOD.

02:53PM 11 Q. OKAY. SO HE'S A MEMBER OF THE FAMILY?

02:53PM 12 A. HE'S A MEMBER OF THE FAMILY.

02:53PM 13 Q. AND THEN YOU ALSO INDICATED THAT DR. KISSINGER WAS A

02:53PM 14 FRIEND AND A CLIENT OF YOURS AS WELL?

02:53PM 15 A. THAT IS CORRECT.

02:53PM 16 Q. OKAY. AND IN RELATION TO THESE CLIENTS OF YOURS, WHEN YOU

02:53PM 17 WERE AT THE CRAVATH LAW FIRM IN THE 2014 TIME PERIOD, YOU

02:54PM 18 DESCRIBED VARIOUS COMMUNICATIONS BETWEEN YOURSELF, MS. HOLMES,

02:54PM 19 AND SOME OF THESE CLIENTS OF YOURS FOR THE PURPOSES OF

02:54PM 20 INTRODUCING THE CLIENTS TO THERANOS; CORRECT?

02:54PM 21 A. YES. I MEAN, SOME WERE INTRODUCED BY ME AND SOME WERE

02:54PM 22 INTRODUCED BY OTHERS, YES.

02:54PM 23 Q. OKAY. AND SOME OF THOSE CLIENTS ENDED UP INVESTING;

02:54PM 24 CORRECT?

02:54PM 25 A. YES.

02:54PM 1 Q. NOW, YOU DESCRIBED YOUR FIRST INTRODUCTION TO THERANOS AS  
02:54PM 2 COMING FROM DR. KISSINGER; RIGHT?

02:54PM 3 A. THAT'S CORRECT.

02:54PM 4 Q. AND DR. KISSINGER WAS ALREADY ON THE BOARD OF DIRECTORS OF  
02:54PM 5 THERANOS; RIGHT?

02:54PM 6 A. THAT'S CORRECT.

02:54PM 7 Q. AND UNDERSTANDING THAT YOU HAVE AN ATTORNEY-CLIENT  
02:54PM 8 RELATIONSHIP WITH DR. KISSINGER, I -- MY QUESTIONS ARE NOT  
02:54PM 9 MEANING OR INTENDING TO INTERFERE WITH THAT, SO IF I'M STARTING  
02:54PM 10 TO STEP ON THAT WITH MY QUESTIONS, PLEASE JUST LET ME KNOW.

02:54PM 11 A. OKAY.

02:54PM 12 Q. PRIOR TO DR. KISSINGER ASKING YOU TO LOOK INTO THERANOS,  
02:55PM 13 WERE YOU ALREADY AWARE OF DR. KISSINGER'S RELATIONSHIP WITH  
02:55PM 14 THERANOS?

02:55PM 15 A. I WAS.

02:55PM 16 Q. OKAY. AND WOULD THAT BE, AT A HIGH LEVEL, SOMEWHAT IN  
02:55PM 17 RELATIONSHIP TO YOUR TRUSTS AND ESTATES WORK FOR MR. KISSINGER?

02:55PM 18 A. IT WOULD HAVE BEEN IN RELATIONSHIP TO MY WORK WITH HIM AS  
02:55PM 19 A CLIENT.

02:55PM 20 Q. OKAY. AND THE FACT THAT DR. KISSINGER HIMSELF WAS ON THE  
02:55PM 21 BOARD OF DIRECTORS PIQUED YOUR INTEREST IN THERANOS; RIGHT?

02:55PM 22 A. PERHAPS.

02:55PM 23 Q. YOU TRUST DR. KISSINGER'S JUDGMENT; CORRECT?

02:55PM 24 A. I DO.

02:55PM 25 Q. I THINK A LOT OF PEOPLE HAVE TRUSTED DR. KISSINGER'S

02:55PM 1 JUDGMENT IN THE LAST 40 TO 50 YEARS; RIGHT?

02:55PM 2 A. RIGHT.

02:55PM 3 Q. AND SO DR. KISSINGER ASKED YOU TO KIND OF LOOK INTO AND

02:55PM 4 LEARN ABOUT THERANOS AND TO ADVISE HIM ON YOUR VIEWS; RIGHT?

02:55PM 5 A. HE ASKED ME TO LOOK INTO IT AND GIVE HIM MY VIEWS.

02:55PM 6 Q. OKAY. BUT HE ALREADY HAD A CONNECTION TO THERANOS; RIGHT?

02:56PM 7 A. HE DID.

02:56PM 8 Q. OKAY. AND AS A RESULT OF THAT REQUEST, YOU REACHED OUT TO

02:56PM 9 MS. HOLMES; IS THAT RIGHT?

02:56PM 10 A. I DON'T KNOW HOW THE CONTACT WAS ORIGINALLY MADE, WHETHER

02:56PM 11 HE CALLED HER OR -- I DON'T REMEMBER SPECIFICALLY.

02:56PM 12 Q. FAIR ENOUGH TO SAY THAT IN SOME WAY, AS A RESULT OF

02:56PM 13 DR. KISSINGER'S REQUEST, YOU WERE PUT INTO CONNECTION WITH

02:56PM 14 MS. HOLMES?

02:56PM 15 A. THAT IS CORRECT.

02:56PM 16 Q. OKAY. AND THAT ULTIMATELY LED TO A PHONE CALL THAT YOU

02:56PM 17 TESTIFIED ABOUT?

02:56PM 18 A. YES.

02:56PM 19 Q. AND IN THAT PHONE CALL, THAT WAS JUST YOURSELF AND

02:56PM 20 MS. HOLMES?

02:56PM 21 A. THAT'S CORRECT.

02:56PM 22 Q. AND WOULD THIS HAVE BEEN IN THIS JULY 2014 TIME PERIOD?

02:56PM 23 A. IT WOULD HAVE BEEN, YES.

02:56PM 24 Q. OKAY. AND HOW LONG DID THE PHONE CALL LAST?

02:56PM 25 A. I DON'T REMEMBER.

02:56PM 1 Q. OKAY. AND YOU DON'T REMEMBER SIGNIFICANT DETAILS FROM  
02:56PM 2 THAT PHONE CALL?

02:56PM 3 A. I REMEMBER THAT WE HAD A CONVERSATION ABOUT THE COMPANY  
02:56PM 4 AND SHE GAVE ME A GENERAL SUMMARY OF WHAT THE COMPANY WAS  
02:56PM 5 DOING, AND THAT KIND OF INFORMATION.

02:56PM 6 Q. OKAY. AND THEN AFTER THAT PHONE CALL, MS. HOLMES CAUSED  
02:57PM 7 SOME MATERIALS TO BE SENT TO YOU; IS THAT RIGHT?

02:57PM 8 A. THAT'S CORRECT.

02:57PM 9 Q. AND THAT WAS THE COVER LETTER THAT WE SAW, AND THEN THE  
02:57PM 10 SUBSTANTIAL STACK OF DOCUMENTS, SOME OF WHICH YOU REVIEWED WITH  
02:57PM 11 MR. SCHENK; RIGHT?

02:57PM 12 A. THAT'S CORRECT.

02:57PM 13 Q. IS IT FAIR TO SAY THAT YOU BASED YOUR DECISION ULTIMATELY  
02:57PM 14 TO INVEST IN THERANOS IN PART UPON YOUR COMMUNICATIONS WITH  
02:57PM 15 MS. HOLMES AND IN PART UPON THE DOCUMENTATION THAT YOU RECEIVED  
02:57PM 16 FROM MS. HOLMES?

02:57PM 17 A. THAT'S CORRECT.

02:57PM 18 Q. AND IF WE CAN PUT UP ON THE SCREEN, I THINK IT'S ALREADY  
02:57PM 19 IN EVIDENCE, EXHIBIT 4173.

02:57PM 20 IT'S IN THE GOVERNMENT'S BINDER, AND ALSO UP ON THE  
02:58PM 21 SCREEN, SIR.

02:58PM 22 A. UH-HUH.

02:58PM 23 Q. ARE YOU THERE?

02:58PM 24 A. I'M THERE.

02:58PM 25 Q. OKAY. SO 4173 IS THE AUGUST 18, 2014 LETTER, TWO PAGES,

02:58PM 1 FROM MS. HOLMES TO YOURSELF.

02:58PM 2 DO YOU SEE THAT?

02:58PM 3 A. I DO.

02:58PM 4 Q. OKAY. AND SOME OF THIS YOU REVIEWED WITH MR. SCHENK, AND  
02:58PM 5 I JUST HAD A FEW QUESTIONS ABOUT SOME OF THE -- SOME OF  
02:58PM 6 MS. HOLMES'S LETTER TO YOU.

02:58PM 7 NOW, IN THE FIRST PARAGRAPH OF THE LETTER BEGINNING, "BY  
02:58PM 8 WAY OF BACKGROUND," DO YOU SEE MS. HOLMES WROTE, "I FOUNDED  
02:58PM 9 THIS COMPANY TO MAKE A DIFFERENCE IN THE WORLD, AND HAVE  
02:58PM 10 RETAINED MAJORITY CONTROL OF THE SHARES IN ORDER TO REALIZE  
02:58PM 11 THAT VISION FOR THE LONG TERM."

02:58PM 12 DO YOU SEE THAT?

02:58PM 13 A. I DO.

02:58PM 14 Q. AND THAT WAS ATTRACTIVE TO YOU; CORRECT?

02:58PM 15 A. IT WAS.

02:59PM 16 Q. THE FACT THAT MS. HOLMES LOOKED TO MAKE A DIFFERENCE IN  
02:59PM 17 THE WORLD, BUT ALSO SHE MAINTAINED CONTROL OF THE COMPANY SO  
02:59PM 18 THAT SHE COULD, YOU KNOW, PURSUE THAT VISION AS OPPOSED TO,  
02:59PM 19 LET'S SAY, MAKING BUSINESS DECISIONS THAT MAY HAVE HAD  
02:59PM 20 SHORT-TERM BENEFIT, BUT NOT SO LONG TERM; IS THAT FAIR?

02:59PM 21 A. THAT'S FAIR.

02:59PM 22 Q. AND YOU HAVE OTHER CLIENTS WHO OPERATE THEIR BUSINESSES  
02:59PM 23 PRIVATELY AS OPPOSED TO PUBLICLY FOR THAT VERY REASON; RIGHT?

02:59PM 24 A. THAT'S CORRECT.

02:59PM 25 Q. AND THEN SHE WROTE, "WE HAVE A VERY LONG TERM MISSION, AND

02:59PM 1 ARE DEEPLY COMMITTED TO REALIZING THAT MISSION BY BUILDING A  
02:59PM 2 COMPANY THAT ESTABLISHES A NEW INDUSTRY, AND STANDARD IN THE  
02:59PM 3 MARKETPLACE, NOT JUST OVER THE COMING YEARS BUT OVER THE COMING  
02:59PM 4 DECADES."

02:59PM 5 DO YOU SEE THAT?

02:59PM 6 A. I DO.

02:59PM 7 Q. AND YOU UNDERSTAND THAT TO BE MS. HOLMES'S VISION OF,  
02:59PM 8 AGAIN, SEEKING LONG-TERM SUCCESS AS OPPOSED TO SHORT-TERM  
02:59PM 9 PROFIT OR GAINS; CORRECT?

02:59PM 10 A. THAT'S THE WAY I UNDERSTOOD IT.

02:59PM 11 Q. AND THAT'S WHAT YOU WERE INTERESTED IN; RIGHT?

03:00PM 12 A. YES.

03:00PM 13 Q. AND AT THE BOTTOM OF THAT PARAGRAPH SHE WROTE, "WE ALSO  
03:00PM 14 BELIEVE IN THE ABILITY TO CREATE THE GREATEST RETURN ON  
03:00PM 15 INVESTMENT FOR OUR SHAREHOLDERS BY REALIZING OUR LONG TERM  
03:00PM 16 VISION AND NOT BEING SUBJECT TO THE WHIMS OF THE PUBLIC MARKET.  
03:00PM 17 AS SUCH, THE COMPANY PLANS TO BE PRIVATE FOR THE LONG TERM."

03:00PM 18 DO YOU SEE THAT?

03:00PM 19 A. I DO.

03:00PM 20 Q. AND YOU UNDERSTOOD AT THE TIME THAT THERANOS HAD NO INTENT  
03:00PM 21 TO ENGAGE IN SOME SORT OF LIQUIDITY EVENT, LIKE GOING PUBLIC IN  
03:00PM 22 AN IPO? YOU UNDERSTOOD THAT?

03:00PM 23 A. I DID.

03:00PM 24 Q. AND THAT WAS FINE WITH YOU; CORRECT?

03:00PM 25 A. THAT WAS FINE.

03:00PM 1 Q. NOW, IN THE LETTER MS. HOLMES CONTINUES ABOUT MIDWAY DOWN,  
03:00PM 2 "HISTORICALLY, THERANOS'S WORK WAS FOCUSED ON CONTRACTS WITH  
03:00PM 3 PHARMACEUTICAL AND MILITARY CLIENTS."

03:00PM 4 DO YOU SEE THAT?

03:00PM 5 A. I DO.

03:00PM 6 Q. AND I THINK YOU INDICATED EARLIER TODAY THAT THAT WAS  
03:01PM 7 SIGNIFICANT TO YOU; CORRECT?

03:01PM 8 A. YES.

03:01PM 9 Q. AND I THINK YOU MENTIONED THAT PHARMACEUTICAL COMPANIES  
03:01PM 10 YOU UNDERSTOOD TO BE QUITE SOPHISTICATED IN THEIR AREAS OF  
03:01PM 11 BUSINESS; IS THAT CORRECT?

03:01PM 12 A. THAT'S CORRECT.

03:01PM 13 Q. AND OBVIOUSLY HAVING MILITARY CLIENTS, THERE'S A POTENTIAL  
03:01PM 14 SCALE THERE IF YOU'RE TALKING ABOUT THE U.S. MILITARY; CORRECT?

03:01PM 15 A. YES.

03:01PM 16 Q. AND YOU WOULD HAVE EXPECTED ANY PHARMACEUTICAL CLIENTS WHO  
03:01PM 17 WERE DOING BUSINESS WITH THERANOS TO BE, YOU KNOW, SATISFIED  
03:01PM 18 WITH THE WORK AND WOULD HAVE PAID FOR THE WORK; CORRECT?

03:01PM 19 A. YES.

03:01PM 20 Q. AND IT WAS REALLY THE RELATIONSHIPS WITH THE  
03:01PM 21 PHARMACEUTICAL COMPANIES AT THERANOS THAT WAS ATTRACTIVE. IS  
03:01PM 22 THAT FAIR TO SAY?

03:01PM 23 A. YES.

03:01PM 24 Q. PARTICULARLY IF A COMPANY CAME BACK AND DID ADDITIONAL  
03:01PM 25 WORK WITH THERANOS MORE THAN ONCE, THAT WOULD HAVE BEEN



03:01PM 1 ATTRACTIVE TO YOU; RIGHT?

03:01PM 2 A. YES.

03:01PM 3 Q. BECAUSE IT SUGGESTS THE WORK WAS VALID AND LEGIT; CORRECT?

03:01PM 4 A. RIGHT.

03:01PM 5 Q. NOW, YOU ALSO KNEW AT THE TIME IN THIS TIME PERIOD WHEN

03:02PM 6 YOU WERE INTRODUCED TO THERANOS THAT THEY HAD SUBSTANTIAL

03:02PM 7 MILITARY PRESENCE ON THE BOARD OF DIRECTORS AS WELL; RIGHT?

03:02PM 8 A. I WAS AWARE OF THAT, YES.

03:02PM 9 Q. OKAY. AND THAT THEORETICALLY COULD HAVE FACILITATED

03:02PM 10 FUTURE BUSINESS MAYBE WITH THE MILITARY; CORRECT?

03:02PM 11 A. CORRECT.

03:02PM 12 Q. AND THAT'S SOMETHING THAT YOU WOULD HAVE HAD IN THE BACK

03:02PM 13 OF YOUR MIND?

03:02PM 14 A. YES.

03:02PM 15 Q. NOW, THIS LETTER, AGAIN, THIS IS AUGUST 18TH, 2014, THE

03:02PM 16 FOURTH FULL PARAGRAPH DOWN, "THERANOS HAS NOT ONLY REDUCED TO

03:02PM 17 PRACTICE AND PATENTED ITS COMPREHENSIVE TECHNOLOGICAL AND

03:02PM 18 OPERATIONAL INFRASTRUCTURE OVER THE PAST TEN YEARS."

03:02PM 19 WE'LL STOP THERE.

03:02PM 20 I THINK YOU MENTIONED EARLIER IN YOUR TESTIMONY ON DIRECT

03:02PM 21 THAT YOU'RE AWARE THAT THERANOS HAD SUBSTANTIAL PATENTS

03:02PM 22 PROTECTING ITS PROPRIETARY TECHNOLOGY?

03:02PM 23 A. I WAS AWARE OF THAT.

03:02PM 24 Q. AND THAT WAS SOMETHING THAT YOU WOULD HAVE EXPECTED;

03:02PM 25 RIGHT?

03:02PM 1 A. RIGHT.

03:02PM 2 Q. AND IT WAS ATTRACTIVE TO YOU THAT THE COMPANY WAS TAKING

03:03PM 3 SERIOUSLY ITS TECHNOLOGY AND TRYING TO PROTECT IT FROM

03:03PM 4 COMPETITORS?

03:03PM 5 A. YES.

03:03PM 6 Q. NOW, THAT PARAGRAPH CONTINUES.

03:03PM 7 "BUT ALSO HAD REGULATORY CERTIFICATIONS TO OPERATE

03:03PM 8 COMMERCIALY, INCLUDING A CLIA-CERTIFIED LABORATORY (THE

03:03PM 9 REGULATORY CERTIFICATION FOR LABS) SINCE 2011."

03:03PM 10 DO YOU SEE THAT?

03:03PM 11 A. I SEE IT.

03:03PM 12 Q. AT THE TIME DID YOU UNDERSTAND WHAT CLIA-CERTIFIED

03:03PM 13 LABORATORY MEANT?

03:03PM 14 A. PROBABLY NOT COMPLETELY.

03:03PM 15 Q. BUT DID YOU UNDERSTAND THAT IT WAS SOME SORT OF FEDERAL

03:03PM 16 REGULATORY REGIME?

03:03PM 17 A. I DID.

03:03PM 18 Q. OKAY. AND DID THAT GIVE YOU SOME CONFIDENCE THAT THERE

03:03PM 19 WAS A REGULATOR OVERSEEING SOME ELEMENT AT LEAST OF THERANOS'S

03:03PM 20 BUSINESS?

03:03PM 21 A. CORRECT.

03:03PM 22 Q. AND THAT ALSO KIND OF VALIDATED THE TECHNOLOGY IN YOUR

03:03PM 23 MIND; CORRECT?

03:03PM 24 A. YES.

03:03PM 25 Q. THEN THE LETTER CONTINUES.

03:03PM 1 "ONCE THE COMPANY WAS READY TO LAUNCH ITS COMMERCIAL  
03:03PM 2 LABORATORY AND ANNOUNCED ITS NATIONAL CONTRACT WITH WALGREENS  
03:04PM 3 IN THE FALL OF 2013, THERANOS BEGAN OPERATING IN THE CONSUMER,  
03:04PM 4 PHYSICIAN, AND HOSPITAL LABORATORY TESTING BUSINESS IN THE  
03:04PM 5 U.S."

03:04PM 6 DO YOU SEE THAT?

03:04PM 7 A. I SEE THAT.

03:04PM 8 Q. AND I THINK YOU TESTIFIED THAT YOU WERE AWARE WHEN  
03:04PM 9 THERANOS LAUNCHED ITS KIND OF COMMERCIAL OFFERING OF BLOOD  
03:04PM 10 TESTING IN WALGREENS STORES; CORRECT?

03:04PM 11 A. YES.

03:04PM 12 Q. AND THAT WOULD HAVE BEEN THE PRIOR FALL OF 2013; RIGHT?

03:04PM 13 A. THAT IS CORRECT.

03:04PM 14 Q. AND WERE YOU MADE AWARE OF THAT AT THE TIME THAT YOU WERE  
03:04PM 15 LOOKING INTO THERANOS FOR DR. KISSINGER, OR WERE YOU  
03:04PM 16 INDEPENDENTLY AWARE OF SOME OF THE COVERAGE OF THERANOS?

03:04PM 17 A. I BELIEVE I BECAME AWARE OF IT AFTER I WAS LOOKING AT THE  
03:04PM 18 COMPANY AFTER HAVING BEEN INTRODUCED BY DR. KISSINGER.

03:04PM 19 Q. OKAY. AND WHEN YOU LEARNED ABOUT THE RELATIONSHIP WITH  
03:04PM 20 WALGREENS AND THE PUBLIC LAUNCH, THAT WAS IMPORTANT TO YOUR  
03:04PM 21 ULTIMATE DECISION TO INVEST; CORRECT?

03:04PM 22 A. IT WAS.

03:04PM 23 Q. AND THE REASON THAT WAS IMPORTANT WAS BECAUSE, ONE, YOU  
03:05PM 24 KNEW THAT WALGREENS WAS A SIGNIFICANT NATIONAL AND EVEN  
03:05PM 25 INTERNATIONAL RETAILER; CORRECT?

03:05PM 1 A. THAT'S CORRECT.

03:05PM 2 Q. WHICH SUGGESTED THAT THEY MAY HAVE HAD THE RESOURCES TO  
03:05PM 3 REALLY HELP THERANOS TAKE ITS BUSINESS NATIONWIDE; CORRECT?

03:05PM 4 A. THAT IS CORRECT.

03:05PM 5 Q. AND AT THE TIME, DUE TO THAT RELATIONSHIP WITH WALGREENS,  
03:05PM 6 YOU WOULD HAVE BELIEVED ANYWAY THAT WALGREENS DID SOME DUE  
03:05PM 7 DILIGENCE INTO THERANOS BEFORE ENTERING INTO A CONTRACTUAL  
03:05PM 8 RELATIONSHIP?

03:05PM 9 MR. SCHENK: OBJECTION. RELEVANCE.

03:05PM 10 THE COURT: WHY DON'T YOU REPHRASE THAT QUESTION?

03:05PM 11 I'LL SUSTAIN THE OBJECTION.

03:05PM 12 BY MR. CAZARES:

03:05PM 13 Q. THE RELATIONSHIP WITH WALGREENS WAS IMPORTANT TO YOUR  
03:05PM 14 INVESTMENT; RIGHT?

03:05PM 15 A. YES.

03:05PM 16 Q. AND ONE ELEMENT WAS BECAUSE YOU BELIEVED THAT A COMPANY  
03:05PM 17 LIKE WALGREENS, A LARGE, SOPHISTICATED CORPORATION, WOULD HAVE  
03:05PM 18 DONE SOME DUE DILIGENCE BEFORE ENTERING INTO BUSINESS WITH  
03:05PM 19 THERANOS; RIGHT?

03:05PM 20 MR. SCHENK: OBJECTION. RELEVANCE.

03:05PM 21 THE COURT: SUSTAINED.

03:05PM 22 YOU CAN ASK ANOTHER QUESTION.

03:06PM 23 BY MR. CAZARES:

03:06PM 24 Q. NOW, GETTING BACK TO THE LETTER, THIS NEXT TO THE LAST  
03:06PM 25 PARAGRAPH, MS. HOLMES WROTE, "ALL CURRENT RESOURCES ARE

03:06PM 1 FOCUSSED ON THIS COMMERCIAL LABORATORY BUSINESS."

03:06PM 2 DO YOU SEE THAT?

03:06PM 3 A. I DO SEE IT.

03:06PM 4 Q. "ALL CURRENT RESOURCES ARE FOCUSSED."

03:06PM 5 SO IT WAS FAIR TO SAY THAT MS. HOLMES WAS UP-FRONT  
03:06PM 6 REPORTING TO YOU AT THE TIME THAT THERANOS WAS ENTIRELY  
03:06PM 7 FOCUSSED ON THE RETAIL ELEMENT OF THEIR BUSINESS; CORRECT?

03:06PM 8 A. I WOULD NOT HAVE INTERPRETED IT THAT WAY.

03:06PM 9 Q. OKAY. BUT THE LETTER SAYS "ALL CURRENT RESOURCES."  
03:06PM 10 YOU SEE THAT; RIGHT?

03:06PM 11 A. BUT THERE'S THE REST OF THE SENTENCE THAT FOLLOWS, "AND  
03:06PM 12 FUTURE GROWTH IN PHARMACEUTICAL, MILITARY, AND OTHER BUSINESS."

03:06PM 13 Q. YEAH, I WAS GOING TO GET TO THAT.

03:06PM 14 THE FIRST PART -- ANYWAY, SHE WRITES, "ALL CURRENT  
03:06PM 15 RESOURCES ARE FOCUSSED ON THIS COMMERCIAL LABORATORY BUSINESS."

03:06PM 16 YOU SEE THAT; RIGHT?

03:07PM 17 A. I DO SEE THOSE WORDS, YES.

03:07PM 18 Q. AND THEN THE SENTENCE CONTINUES, "AND FUTURE GROWTH IN  
03:07PM 19 PHARMACEUTICAL, MILITARY, AND OTHER BUSINESS WILL FOLLOW THE  
03:07PM 20 SUCCESSFUL ESTABLISHMENT OF THERANOS'S COMMERCIAL LABORATORY  
03:07PM 21 INFRASTRUCTURE."

03:07PM 22 DO YOU SEE THAT?

03:07PM 23 A. I DO.

03:07PM 24 Q. OKAY. NOW, ULTIMATELY I THINK YOU ALREADY TESTIFIED THAT  
03:07PM 25 IN THIS LATE SUMMER, EARLY FALL 2013 TIME PERIOD THAT THERANOS

03:07PM 1 HAD 29 RETAIL LOCATIONS IN ARIZONA AND 1 IN CALIFORNIA;

03:07PM 2 CORRECT?

03:07PM 3 A. CORRECT.

03:07PM 4 Q. SO THE KIND OF NATIONAL LABORATORY INFRASTRUCTURE HAD NOT  
03:07PM 5 YET BEEN ESTABLISHED; CORRECT?

03:07PM 6 A. SAY THAT AGAIN.

03:07PM 7 Q. YOU KNEW AT THE TIME THAT THERANOS DID NOT HAVE A NATIONAL  
03:07PM 8 FOOTPRINT WITH ITS RETAIL OPERATIONS ACROSS THE UNITED STATES?

03:07PM 9 A. I UNDERSTOOD THAT WITH RESPECT TO WALGREENS, THEY WERE  
03:07PM 10 LOCATED IN 29 IN ARIZONA AND 1 IN PALO ALTO.

03:07PM 11 Q. AND YOU SEE THAT MS. HOLMES WROTE, "AND FUTURE GROWTH IN  
03:08PM 12 PHARMACEUTICAL, MILITARY, AND OTHER BUSINESS WILL FOLLOW THE  
03:08PM 13 SUCCESSFUL ESTABLISHMENT OF THERANOS'S COMMERCIAL LABORATORY  
03:08PM 14 INFRASTRUCTURE NATIONWIDE."

03:08PM 15 DO YOU SEE THAT?

03:08PM 16 A. I DO.

03:08PM 17 Q. AND FAIR TO INTERPRET THAT PHARMACEUTICAL, MILITARY, AND  
03:08PM 18 OTHER BUSINESS GROWTH IS GOING TO COME AFTER THE WALGREENS  
03:08PM 19 ROLLOUT?

03:08PM 20 A. OR GROWTH FROM WHERE IT IS TODAY WOULD COME AFTERWARDS,  
03:08PM 21 YES.

03:08PM 22 Q. FAIR ENOUGH.

03:08PM 23 TURNING TO THE TOP OF THE SECOND PAGE, THE PARAGRAPH  
03:08PM 24 READS, FROM MS. HOLMES TO YOU, "IN ADDITION TO ITS WALGREENS  
03:08PM 25 CONTRACT, THERANOS HAS ENTERED INTO LONG TERM CONTRACTS WITH

03:08PM 1 INSURANCE PROVIDERS, MEDICARE, MEDICAID PROGRAMS, HOSPITAL  
03:08PM 2 SYSTEMS AND PHYSICIAN GROUPS."

03:08PM 3 DO YOU SEE THAT?

03:08PM 4 A. I DO.

03:08PM 5 Q. DID MS. HOLMES TELL YOU THAT THERANOS HAD ENTERED INTO A  
03:08PM 6 CONTRACT TO PROVIDE SERVICES TO UNITED HEALTH PATIENTS?

03:09PM 7 A. I DON'T REMEMBER THAT SPECIFICALLY.

03:09PM 8 Q. OKAY. DID MS. HOLMES TELL YOU THAT THERANOS HAD ENTERED  
03:09PM 9 INTO AGREEMENTS WITH THE BLUE CROSS, BLUE SHIELD BUSINESSES TO  
03:09PM 10 PROVIDE SERVICES TO INSURED PATIENTS OF THOSE ORGANIZATIONS?

03:09PM 11 A. I HAVE SOME KNOWLEDGE OF THAT, BUT I DON'T KNOW WHERE IN  
03:09PM 12 THE PROCESS SHE TOLD ME THAT.

03:09PM 13 Q. NOW, YOUR COMMUNICATIONS WITH MS. HOLMES WERE THE PHONE  
03:09PM 14 CALL, THE DOCUMENTS, AND I THINK THERE WERE TWO MEETINGS IN  
03:09PM 15 OCTOBER OF 2014; IS THAT RIGHT?

03:09PM 16 A. THAT'S CORRECT.

03:09PM 17 Q. SO IF YOU LEARNED ABOUT THE BLUE CROSS, BLUE SHIELD  
03:09PM 18 RELATIONSHIP, IT WOULD HAVE TAKEN PLACE IN THAT TIME PERIOD?

03:09PM 19 A. WELL, I OBVIOUSLY KNEW HER AND FOLLOWED THE COMPANY EVEN  
03:09PM 20 AFTER THAT PERIOD OF TIME, SO IT COULD HAVE COME AT A LATER  
03:09PM 21 DATE.

03:09PM 22 Q. NOW, AT THE BOTTOM OF THE SECOND PAGE MS. HOLMES WROTE, "I  
03:09PM 23 AM HAPPY TO PROVIDE MORE BACKGROUND ON ANY OF THE ABOVE, OR ANY  
03:10PM 24 OF THE MATERIALS ENCLOSED IN THIS PACKAGE. THERANOS'S  
03:10PM 25 INVESTMENT DOCUMENTS ARE ENCLOSED HEREIN. THE ADDITIONAL

03:10PM 1 MATERIALS FOCUS ON THE INFRASTRUCTURE THERANOS HAS DEVELOPED  
03:10PM 2 AND INITIAL MARKET OF COMMERCIAL LABORATORY TESTING THAT  
03:10PM 3 THERANOS HAS ENTERED."

03:10PM 4 DO YOU SEE THAT?

03:10PM 5 A. I DO.

03:10PM 6 Q. SO IT'S FAIR TO SAY THAT MS. HOLMES INVITED YOU TO ASK  
03:10PM 7 QUESTIONS RELATING TO THE MATERIALS THAT SHE WAS PROVIDING;  
03:10PM 8 CORRECT?

03:10PM 9 A. YES.

03:10PM 10 Q. AND YOU FELT FREE TO DO SO?

03:10PM 11 A. I DID.

03:10PM 12 Q. AND, IN FACT, IN RELATION TO SOME ISSUES THAT WERE  
03:10PM 13 IMPORTANT TO YOU, YOU DID FOLLOW UP; RIGHT?

03:10PM 14 A. I DID.

03:10PM 15 Q. IF WE CAN PUT UP ON THE SCREEN -- I THINK IT'S ALREADY IN  
03:11PM 16 EVIDENCE, YOUR HONOR -- EXHIBIT 7753?

03:11PM 17 THE COURT: ALL RIGHT.

03:11PM 18 MR. CAZARES: 7753. THERE'S AN ATTACHMENT,  
03:11PM 19 NUMBER 1.

03:11PM 20 Q. THIS ISN'T SOMETHING THAT IS GOING TO BE IN YOUR BINDER,  
03:11PM 21 MR. MOSLEY. I APOLOGIZE. BUT IT WILL BE UP ON THE SCREEN.

03:11PM 22 HOPEFULLY IT'S BLOWN UP LARGE ENOUGH FOR YOU TO SEE THAT.

03:11PM 23 AND YOU SEE UP ON THE SCREEN THERE'S A SPREADSHEET, AN  
03:11PM 24 EXCEL SPREADSHEET IDENTIFYING SOME CUSTOMERS ON THE LEFT-HAND  
03:11PM 25 COLUMN.



03:11PM 1 DO YOU SEE THAT?

03:11PM 2 A. I DO.

03:11PM 3 Q. AND SOME OF THESE NAMES IN THIS COLUMN, THESE ARE FAMILIAR

03:11PM 4 TO YOU; RIGHT?

03:11PM 5 A. MOST OF THEM ARE, YES.

03:11PM 6 Q. OKAY. THESE ARE SOME RELATIVELY LARGE PHARMACEUTICAL

03:11PM 7 COMPANIES IN THE U.S. AND ELSEWHERE; CORRECT?

03:11PM 8 A. CORRECT.

03:11PM 9 Q. AND IS IT FAIR TO SAY THAT THIS LIST HERE IS REFLECTIVE OF

03:11PM 10 THE PHARMACEUTICAL RELATIONSHIPS THAT MS. HOLMES DESCRIBED TO

03:11PM 11 YOU?

03:11PM 12 A. I DON'T REMEMBER WHETHER SHE GAVE ME A SPECIFIC LIST, BUT

03:12PM 13 THESE ARE SIMILAR COMPANIES. THEY WERE THE COMPANIES THAT I

03:12PM 14 WOULD EXPECT TO BE ON SUCH A REPORT, SUCH A LIST.

03:12PM 15 Q. AND I THINK BECAUSE YOU INDICATED THAT MS. HOLMES TOLD YOU

03:12PM 16 10 OF THE 15 LARGEST PHARMACEUTICAL COMPANIES; CORRECT?

03:12PM 17 A. THAT'S CORRECT.

03:12PM 18 Q. AND MANY OF THESE ARE VERY -- ARE COMPANIES THAT ARE

03:12PM 19 FAMILIAR TO YOU; RIGHT?

03:12PM 20 A. YES.

03:12PM 21 Q. FOR EXAMPLE, PFIZER?

03:12PM 22 A. I DON'T THINK I SEE PFIZER ON THIS LIST.

03:12PM 23 Q. OKAY. NOVARTIS?

03:12PM 24 A. NOVARTIS IS A LARGE PHARMACEUTICAL.

03:12PM 25 Q. ASTRAZENECA?

03:12PM 1 A. YES. SCHERING-PLOUGH.

03:12PM 2 Q. CELGENE. OKAY.

03:12PM 3 AND AGAIN, THE RELATIONSHIPS WITH THESE PHARMACEUTICAL

03:12PM 4 COMPANIES WAS IMPORTANT TO YOU; CORRECT?

03:12PM 5 A. YES.

03:12PM 6 Q. IN YOUR REVIEW OF MATERIALS RELATING TO THERANOS, YOU HAD

03:13PM 7 A CHANCE TO TAKE A LOOK AT THERANOS'S WEBSITE; CORRECT?

03:13PM 8 A. I DID, YES.

03:13PM 9 Q. OKAY. SO AT SOME POINT PRIOR TO THE TIME OF INVESTING,

03:13PM 10 YOU TOOK A LOOK AROUND JUST TO GATHER WHATEVER INFORMATION YOU

03:13PM 11 COULD GATHER; RIGHT?

03:13PM 12 A. YES.

03:13PM 13 Q. IS IT FAIR TO SAY WHATEVER IS IN THE WEBSITE, YOU PROBABLY

03:13PM 14 SAW? FAIR?

03:13PM 15 A. I THINK THAT'S LIKELY.

03:13PM 16 Q. IF YOU CAN TAKE A LOOK AT EXHIBIT 5805.

03:13PM 17 AGAIN, THIS IS ONE OF THOSE ONES ON THE SCREEN. I KNOW

03:13PM 18 THE HARD COPY MAY BE EASIER, BUT THIS IS WHAT I'VE GOT RIGHT

03:13PM 19 NOW.

03:13PM 20 SO ON THE SCREEN IS AN IMAGE OF THERANOS'S WEBSITE.

03:13PM 21 DO YOU SEE THAT?

03:13PM 22 A. I SEE IT.

03:13PM 23 Q. DOES IT LOOK FAMILIAR?

03:13PM 24 A. IT CERTAINLY LOOKS LIKE THE WEBSITE.

03:13PM 25 Q. OKAY. NOW, IF WE GO TO PAGE 2 UNDER THE "GOODBYE, BIG BAD

03:14PM 1 NEEDLE" -- AND YOU REMEMBER MR. SCHENK SHOWED YOU SOME IMAGES  
03:14PM 2 FROM THE BINDER THAT YOU WERE SEEING THAT ALSO REFERENCED  
03:14PM 3 "GOODBYE, BIG BAD NEEDLE," AND THERE WAS SOME REFERENCE TO A  
03:14PM 4 CHILD.

03:14PM 5 DO YOU REMEMBER THAT?

03:14PM 6 A. I DO.

03:14PM 7 Q. AND NOW ON THE WEBSITE IT INDICATES, "INSTEAD OF A HUGE  
03:14PM 8 NEEDLE, WE CAN USE A TINY FINGERSTICK OR COLLECT A MICRO-SAMPLE  
03:14PM 9 FROM A VENOUS DRAW."

03:14PM 10 DO YOU SEE THAT?

03:14PM 11 A. I SEE THAT.

03:14PM 12 Q. NOW, YOU INDICATED THAT YOU UNDERSTOOD THERANOS'S CORE  
03:14PM 13 BUSINESS TO BE THIS FINGERSTICK TECHNOLOGY; RIGHT?

03:14PM 14 A. I DID.

03:14PM 15 Q. OKAY. BUT YOU ALSO UNDERSTOOD THAT THERE WERE SOME TESTS  
03:14PM 16 THAT THERANOS COULD NOT DO YET ON ITS FINGERSTICK TECHNOLOGY;  
03:14PM 17 RIGHT?

03:14PM 18 A. I DID NOT KNOW THAT.

03:14PM 19 Q. ON THE WEBSITE IT INDICATES THAT SOME TESTS WILL BE RUN  
03:14PM 20 USING A VENOUS DRAW.

03:14PM 21 DO YOU SEE THAT?

03:14PM 22 A. I DO SEE IT.

03:14PM 23 Q. OKAY. AND YOU DID LOOK AT THE WEBSITE AT THE TIME;  
03:14PM 24 CORRECT?

03:14PM 25 A. I SAID I DID, YES.

03:14PM 1 Q. OKAY. IF WE CAN CONTINUE ON TO PAGE 7 OF THE WEBSITE.

03:15PM 2 AT THE TIME DID YOU HAVE A CHANCE TO TAKE A LOOK AT THE  
03:15PM 3 TEST MENU THAT THERANOS POSTED ON ITS WEBSITE?

03:15PM 4 A. I MAY HAVE, BUT I DON'T REMEMBER IT SPECIFICALLY.

03:15PM 5 Q. OKAY. AND YOU SEE THE TESTS, THE PRICING RANGES,  
03:15PM 6 SOMETIMES FROM THE SINGLE DOLLAR FIGURES INTO THE 10, \$20 RANGE  
03:15PM 7 FOR MANY OF THEM.

03:15PM 8 DO YOU SEE THAT?

03:15PM 9 A. I SEE THAT.

03:15PM 10 Q. AND ONE OF THE BUSINESS PROPOSITIONS AND VISIONS THAT  
03:15PM 11 ELIZABETH COMMUNICATED TO YOU WAS THIS KIND OF PRICING POWER  
03:15PM 12 THAT THERANOS WAS GOING TO HAVE COMPARED TO THEIR COMPETITORS,  
03:15PM 13 LOWER PRICE, HOPEFULLY LARGER VOLUME OF WORK; RIGHT?

03:15PM 14 A. CORRECT.

03:15PM 15 Q. OKAY. AND IN ORDER TO REALIZE THAT, THE NATIONAL ROLLOUT  
03:15PM 16 WOULD REALLY HAVE TO GAIN PENETRATION THROUGH THE WALGREENS  
03:16PM 17 STORES, I THINK AS YOU SAID EARLIER TODAY; CORRECT?

03:16PM 18 A. I SAID THAT, OR HOSPITALS, OR ALL OF THE OTHER PLACES THAT  
03:16PM 19 THEY INTENDED TO ROLL OUT.

03:16PM 20 Q. OKAY. I THINK YOU SAID YOU UNDERSTOOD THAT THE 2015  
03:16PM 21 PROJECTIONS THAT YOU RECEIVED IN THAT BINDER OF DOCUMENTS  
03:16PM 22 ASSUMED A SIGNIFICANT PENETRATION IN THE WALGREENS STORES;  
03:16PM 23 CORRECT?

03:16PM 24 A. YEAH. THERE WAS ONE, ONE REVENUE LINE THAT WAS FOR  
03:16PM 25 PHARMACEUTICAL, NOT PHARMACEUTICAL, BUT DRUG STORES, WALGREENS.

03:16PM 1 Q. OKAY. AND AGAIN, YOU UNDERSTOOD THAT THAT WAS DEPENDENT  
03:16PM 2 UPON NATIONWIDE PENETRATION IN WALGREENS STORES; CORRECT?

03:16PM 3 A. AGAIN, I HAD NO PARTICULAR KNOWLEDGE CERTAINLY AT THE TIME  
03:16PM 4 WHAT LEVEL OF PENETRATION THAT REQUIRED. I DID NOT KNOW THAT.

03:16PM 5 Q. BUT YOU COULD HAVE ASKED; RIGHT?

03:16PM 6 A. YES.

03:16PM 7 Q. BUT YOU DID KNOW THERE WERE ABOUT 30 STORES IN OCTOBER OF  
03:17PM 8 2013; RIGHT?

03:17PM 9 A. I DID.

03:17PM 10 Q. YOU CAN TAKE THAT DOWN, MR. ALLEN.

03:17PM 11 NOW, ONE OF THE ITEMS THAT MR. SCHENK SHOWED YOU IN YOUR  
03:17PM 12 DIRECT WAS THIS JOHNS HOPKINS REPORT.

03:17PM 13 DO YOU REMEMBER THAT?

03:17PM 14 A. I DO.

03:17PM 15 Q. AND IF YOU COULD PUT UP ON THE SCREEN 20553, WHICH IS  
03:17PM 16 ALREADY IN EVIDENCE.

03:17PM 17 AND IF WE CAN GO TO PAGE 2.

03:17PM 18 THIS IS A COPY OF THE JOHNS HOPKINS REPORT THAT YOU  
03:17PM 19 TESTIFIED ABOUT EARLIER TODAY; RIGHT?

03:17PM 20 A. IT IS.

03:17PM 21 Q. OKAY. AND YOU'RE VERY FAMILIAR WITH WHAT JOHNS HOPKINS  
03:17PM 22 IS, ONE OF THE FOREMOST MEDICAL INSTITUTIONS IN THE COUNTRY;  
03:18PM 23 RIGHT?

03:18PM 24 A. I'M FAMILIAR WITH IT, YES.

03:18PM 25 Q. OKAY. AND YOU KNEW FROM EXPERIENCE THAT A COMPANY LIKE

03:18PM 1 WALGREENS WOULD DO EXTENSIVE DUE DILIGENCE BEFORE ENGAGING IN  
03:18PM 2 BUSINESS WITH THERANOS; RIGHT?

03:18PM 3 MR. SCHENK: YOUR HONOR, OBJECTION. RELEVANCE.

03:18PM 4 THE COURT: SUSTAINED.

03:18PM 5 BY MR. CAZARES:

03:18PM 6 Q. YOU WERE AWARE THAT WALGREENS HAD ENGAGED JOHNS HOPKINS TO  
03:18PM 7 EVALUATE THERANOS; CORRECT?

03:18PM 8 A. I HAD CERTAINLY READ THIS REPORT, CORRECT.

03:18PM 9 Q. NOW, IF WE GO TO THE BOTTOM OF THE REPORT, THE SECOND  
03:18PM 10 PAGE, UNDER DISCLAIMER, DO YOU SEE THE DISCLAIMER ON THIS  
03:18PM 11 REPORT SAYS, "THIS INFORMATION IS BEING PROVIDED SOLELY FOR THE  
03:18PM 12 BENEFIT OF WALGREENS AND SHALL BE USED BY WALGREENS FOR ITS  
03:18PM 13 INTERNAL PURPOSES ONLY. IN ADDITION, THE MATERIALS PROVIDED IN  
03:18PM 14 NO WAY SIGNIFY AN ENDORSEMENT BY JOHNS HOPKINS TO ANY PRODUCT  
03:18PM 15 OR SERVICE."

03:18PM 16 DO YOU SEE THAT?

03:18PM 17 A. I DO.

03:18PM 18 Q. AND THAT'S HOW YOU LEARNED THAT THE REPORT WAS PREPARED  
03:18PM 19 FOR WALGREENS AND NOT FOR THERANOS; CORRECT?

03:19PM 20 A. I'M NOT SURE THAT'S HOW I CAME TO BELIEVE IT WAS PREPARED  
03:19PM 21 FOR WALGREENS. I MEAN, I SEE THE DISCLAIMER, BUT I DON'T THINK  
03:19PM 22 I WOULD HAVE FOCUSED ON THAT WORDING AND MADE THAT CONCLUSION  
03:19PM 23 FROM THAT WORDING.

03:19PM 24 Q. OKAY. BUT THE DOCUMENT, I'M READING IT CORRECTLY, RIGHT?  
03:19PM 25 IT SAYS, "THIS INFORMATION IS BEING PROVIDED SOLELY FOR THE

03:19PM 1 BENEFIT OF WALGREENS"?

03:19PM 2 A. IT DOES SAY THAT, YES.

03:19PM 3 Q. OKAY. AND THEN GETTING BACK TO THE FIRST PAGE OF THE

03:19PM 4 REPORT UNDER MEETING OBJECTIVES, DO YOU SEE THE REPORT THAT YOU

03:19PM 5 READ SAID, "HOPKINS TEAM WAS ASKED TO COMMENT ON VALIDITY AND

03:19PM 6 USEFULNESS OF THERANOS'S PRODUCT."

03:19PM 7 DO YOU SEE THAT?

03:19PM 8 A. I DO.

03:19PM 9 Q. AND IT SAYS, "SPECIFICALLY RELATED TO THE SCIENCE THAT

03:19PM 10 SUPPORTS THE TECHNOLOGY AND THE APPLICATION OF THE TECHNOLOGY."

03:20PM 11 DO YOU SEE THAT?

03:20PM 12 A. I DO.

03:20PM 13 Q. AND IT SAYS, "IN A VARIETY OF SETTINGS INCLUDING HOSPITAL,

03:20PM 14 CLINIC, LABORATORY, AND POTENTIALLY WITHIN WALGREENS AS AN ADD

03:20PM 15 ON TO THE CLINICAL PROGRAMS AND RETAIL PHARMACY BUSINESS."

03:20PM 16 DO YOU SEE THAT?

03:20PM 17 A. I DO.

03:20PM 18 Q. NOW, THE DATE OF THE REPORT IS APRIL 27, 2010.

03:20PM 19 DID YOU NOTICE THAT WHEN YOU REVIEWED IT?

03:20PM 20 A. I MAY OR MAY NOT. I DON'T REMEMBER.

03:20PM 21 Q. OKAY. BUT APRIL 2010, THAT WAS MORE THAN FOUR YEARS

03:20PM 22 BEFORE YOU HAD YOUR INTRODUCTION TO THERANOS IN THE SUMMER OF

03:20PM 23 2014; RIGHT?

03:20PM 24 A. THAT IS CORRECT.

03:20PM 25 Q. OKAY. AND YOU WOULD HAVE EXPECTED THERANOS TO DEVELOP

03:20PM 1 ADDITIONAL TECHNOLOGY AND FURTHER ADVANCE ITS TECHNOLOGY SINCE  
03:20PM 2 2010; RIGHT?

03:20PM 3 A. I PROBABLY WOULD HAVE ASSUMED IT WAS LIKELY.

03:20PM 4 Q. IN ORDER FOR THERE ULTIMATELY TO BE A ROLLOUT WITH  
03:20PM 5 WALGREENS STORES; RIGHT?

03:20PM 6 A. I DIDN'T HAVE ANY PARTICULAR KNOWLEDGE ABOUT THAT.

03:20PM 7 Q. OKAY. AND THEN THE JOHNS HOPKINS REPORT CONTINUES.  
03:20PM 8 UNDER METHODOLOGY, IT DESCRIBES, "THE HOPKINS TEAM  
03:21PM 9 REVIEWED PROPRIETARY DATA ON TEST PERFORMANCE FOR ROUTINE TESTS  
03:21PM 10 (CLINICAL PATHOLOGY, HEMATOLOGY, AND SPECIAL TESTS)."  
03:21PM 11 DO YOU SEE THAT?

03:21PM 12 A. I DO.

03:21PM 13 Q. AND THEN "THERANOS PRESENTED ADDITIONAL DATA ON  
03:21PM 14 TECHNOLOGY, TEST PERFORMANCE, AND BUSINESS VISION -- AND  
03:21PM 15 DEMONSTRATED TECHNOLOGY ON SITE."  
03:21PM 16 DO YOU SEE THAT?

03:21PM 17 A. I DO.

03:21PM 18 Q. AND, AGAIN, THE OPINIONS STATED IN THE REPORT WERE  
03:21PM 19 IMPORTANT TO YOUR INVESTMENT DECISION; RIGHT?

03:21PM 20 A. THEY WERE.

03:21PM 21 Q. AND THEN YOU SEE ON THE NEXT BULLET ON THE REPORT IT  
03:21PM 22 STATES, "DR. ROSAN COMMENTED ON WALGREENS PRELIMINARY STRATEGY  
03:21PM 23 TO EXPLORE EXPANDING INTO THE LABORATORY SPACE, EXPANDING ITS  
03:21PM 24 HEALTH SERVICES OFFERINGS TO INCLUDE LAB AND PATHOLOGY TESTING  
03:21PM 25 WITHIN WALGREENS RETAIL SPACE."



03:21PM 1 DO YOU SEE THAT?

03:21PM 2 A. I DO.

03:21PM 3 Q. AND SOME OF THIS INFORMATION IN THE WALGREENS REPORT YOU

03:22PM 4 IDENTIFIED IN THAT MEMO THAT YOU SENT TO DR. KISSINGER;

03:22PM 5 CORRECT?

03:22PM 6 A. I DID.

03:22PM 7 Q. AND YOU QUOTED SOME OF THE JOHNS HOPKINS REPORT TO

03:22PM 8 DR. KISSINGER, AGAIN, BECAUSE YOU RECOGNIZED JOHNS HOPKINS IS A

03:22PM 9 WELL RESPECTED MEDICAL INSTITUTION; CORRECT?

03:22PM 10 A. THAT IS CORRECT.

03:22PM 11 Q. AND AN EXTERNAL PARTY TO THERANOS; CORRECT?

03:22PM 12 A. CORRECT.

03:22PM 13 Q. IF WE CAN TAKE A LOOK AT EXHIBIT 14118, AND THAT SHOULD BE

03:23PM 14 IN THE DARKER BINDER THAT I SET ON THE TABLE WITH A GREEN AND

03:23PM 15 WHITE LABEL, 14118.

03:23PM 16 THE COURT: IS THIS A NEW BINDER?

03:23PM 17 MR. CAZARES: OH, NO. DID I NOT GIVE YOU YOUR

03:23PM 18 BINDER, YOUR HONOR? I APOLOGIZE. SORRY ABOUT THAT.

03:23PM 19 THE COURT: YES. SURE.

03:23PM 20 MR. CAZARES: (HANDING.)

03:23PM 21 Q. HAVE YOU HAD A CHANCE TO TAKE A LOOK AT 14118, MR. MOSLEY?

03:24PM 22 A. I HAVE.

03:24PM 23 Q. AND IT APPEARS TO BE AN EMAIL CHAIN, THE LATTER OF WHICH

03:24PM 24 IS DATED 8-21-2014.

03:24PM 25 DO YOU SEE THAT AT THE TOP OF THE PAGE?

03:24PM 1 A. I DO.

03:24PM 2 Q. AND THIS LAST MESSAGE IS FROM MS. HOLMES TO YOURSELF,

03:24PM 3 COPYING A DAN EDLIN.

03:24PM 4 DO YOU SEE THAT?

03:24PM 5 A. I DO.

03:24PM 6 Q. AND THE SUBJECT MATTER IS BLANK CDA.

03:24PM 7 DO YOU SEE THAT?

03:24PM 8 A. I DO.

03:24PM 9 MR. CAZARES: MOVE TO ADMIT 14118, YOUR HONOR.

03:24PM 10 MR. SCHENK: NO OBJECTION.

03:24PM 11 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:24PM 12 (DEFENDANT'S EXHIBIT 14118 WAS RECEIVED IN EVIDENCE.)

03:24PM 13 BY MR. CAZARES:

03:24PM 14 Q. SO TAKING A LOOK AT THE EARLIEST OF THE MESSAGES IN THE

03:24PM 15 CHAIN ON PAGE 2 AT THE TOP OF THE SECOND PAGE.

03:24PM 16 AND IT'S ALSO UP ON THE SCREEN, MR. MOSLEY.

03:24PM 17 AND IT'S A MESSAGE DATED 8-19-2014. THIS ONE ACTUALLY

03:25PM 18 STARTS ON THE BOTTOM OF THE FIRST PAGE -- I APOLOGIZE -- FROM

03:25PM 19 MS. HOLMES TO YOURSELF AND COPYING MR. EDLIN.

03:25PM 20 DO YOU SEE THAT?

03:25PM 21 A. I SEE IT.

03:25PM 22 Q. OKAY. AND MS. HOLMES WROTE, "DAN: IT WAS GREAT TO

03:25PM 23 CONNECT YESTERDAY.

03:25PM 24 "PLEASE FIND OUR CDA ATTACHED. MATERIALS ARE FOLLOWING BY

03:25PM 25 MAIL.

03:25PM 1 "I'M LOOKING FORWARD TO OUR NEXT CONVERSATION."

03:25PM 2 DO YOU SEE THAT?

03:25PM 3 A. I DO.

03:25PM 4 Q. AND DO YOU UNDERSTAND THE CDA TO BE A CONFIDENTIAL

03:25PM 5 DISCLOSURE AGREEMENT?

03:25PM 6 A. I DO.

03:25PM 7 Q. AND PRIOR TO YOUR RELATIONSHIP WITH THERANOS, YOU HAD

03:25PM 8 ENGAGED IN EXECUTING CONFIDENTIALITY AGREEMENTS IN RELATIONSHIP

03:25PM 9 WITH BUSINESS IN THE PAST; RIGHT?

03:25PM 10 A. YES.

03:25PM 11 Q. AND WHEN YOU SIGNED THE CDA, YOU'RE KIND OF AGREEING TO

03:25PM 12 KEEP THINGS CONFIDENTIAL; CORRECT?

03:25PM 13 A. THAT IS CORRECT.

03:25PM 14 Q. FOR THE BENEFIT OF THE PARTIES; CORRECT?

03:25PM 15 A. YES.

03:25PM 16 Q. AND CONTINUING IN THE EMAIL CHAIN ON THE BOTTOM OF PAGE 1,

03:26PM 17 IT LOOKS LIKE YOU RESPONDED ON AUGUST 20TH OF 2014.

03:26PM 18 DO YOU SEE THAT?

03:26PM 19 A. I DO.

03:26PM 20 Q. AND IT APPEARS THAT YOU WROTE, "IT WAS GREAT TO CONNECT

03:26PM 21 WITH YOU AS WELL.

03:26PM 22 "I FULLY UNDERSTAND THE IMPORTANCE OF THE CDA."

03:26PM 23 AND THAT WAS CORRECT; RIGHT?

03:26PM 24 A. THAT'S WHAT IT SAYS.

03:26PM 25 Q. YOU UNDERSTOOD THAT AT THE TIME; RIGHT?

03:26PM 1 A. I UNDERSTOOD THE IMPORTANCE OF THE CDA? YES, I DID.

03:26PM 2 Q. OKAY. AND YOU WROTE, "IT IS A VERY BALANCED AND  
03:26PM 3 REASONABLE DOCUMENT."

03:26PM 4 RIGHT?

03:26PM 5 A. YES.

03:26PM 6 Q. AND YOU DIDN'T SEE ANYTHING UNUSUAL ABOUT THERANOS  
03:26PM 7 REQUESTING A CDA FROM YOU?

03:26PM 8 A. I DID NOT.

03:26PM 9 Q. AND THEN YOU CONTINUE THAT YOU WILL PROCEED TO GET IT  
03:26PM 10 SIGNED BY THE STAVROS NIARCHOS FOUNDATION, AND ANYONE AT THAT  
03:26PM 11 ORGANIZATION WILL HAVE A CHANCE TO REVIEW THE MATERIALS AND  
03:26PM 12 GREG PENNER AND ANYONE ELSE IN OR WITH THE WALTON FAMILY WHO  
03:26PM 13 WILL SEE THE MATERIALS.

03:26PM 14 AND YOU SAID YOU WOULD SIGN IT YOURSELF; CORRECT?

03:26PM 15 A. I DID.

03:26PM 16 Q. AND YOU ULTIMATELY DID SIGN THE CDA; RIGHT?

03:27PM 17 A. YES, I DID.

03:27PM 18 Q. AND THE CDA FACILITATED YOUR RECEIPT OF INFORMATION FROM  
03:27PM 19 THERANOS; RIGHT?

03:27PM 20 A. THAT IS CORRECT.

03:27PM 21 Q. AND UP UNTIL THIS POINT, AUGUST OF 2014, YOU HAD NO  
03:27PM 22 CONVERSATIONS OR COMMUNICATIONS WITH MR. BALWANI; CORRECT?

03:27PM 23 A. I HAD NOT.

03:27PM 24 Q. AND THEN IT LOOKS LIKE, CONTINUING ON THE CHAIN, IT LOOKS  
03:27PM 25 LIKE YOU RETURNED THE CDA'S SIGNED BY SOME OF YOUR CLIENTS AND

03:27PM 1 YOURSELF, AND THEN MS. HOLMES WROTE SHE "LOOKS FORWARD TO OUR  
03:27PM 2 NEXT CONVERSATION."

03:27PM 3 DO YOU SEE THAT?

03:27PM 4 A. I DO.

03:27PM 5 Q. AND AS A RESULT OF SIGNING THE CDA, YOU ALSO RECEIVED THAT  
03:27PM 6 BINDER OF DOCUMENTS FROM MS. HOLMES; CORRECT?

03:27PM 7 A. THAT IS CORRECT.

03:27PM 8 Q. AND THAT'S SOME OF WHAT YOU DISCUSSED WITH MR. SCHENK  
03:27PM 9 EARLIER TODAY; RIGHT?

03:27PM 10 A. I DID.

03:27PM 11 Q. NOW, IF WE CAN TAKE A LOOK AT EXHIBIT 3387, WHICH IS THE  
03:28PM 12 PACKET OF DOCUMENTS FROM THE INVESTOR BINDER.

03:28PM 13 A. OKAY.

03:28PM 14 Q. AND IF WE CAN TAKE A LOOK AT PAGE 280, WHICH IS THE PAGE  
03:28PM 15 AT THE BOTTOM OF THE DOCUMENT. IT'S ALSO UP ON THE SCREEN,  
03:28PM 16 SIR.

03:29PM 17 A. OKAY. I HAVE IT.

03:29PM 18 Q. AND, AGAIN, THE DOCUMENT IN THE INVESTOR PACKET THAT YOU  
03:29PM 19 RECEIVED ON THIS PAGE, 280, APPEARS TO READ, "THERANOS'S  
03:29PM 20 PROPRIETARY, PATENTED TECHNOLOGY RUNS COMPREHENSIVE BLOOD TESTS  
03:29PM 21 FROM A FINGERSTICK AND TESTS FROM MICRO-SAMPLES OF OTHER  
03:29PM 22 MATRICES AND GENERATES SIGNIFICANTLY HIGHER INTEGRITY DATA THAN  
03:29PM 23 CURRENTLY POSSIBLE."

03:29PM 24 DO YOU SEE THAT?

03:29PM 25 A. I DO.

03:29PM 1 Q. AND YOU REVIEWED THE INVESTOR MATERIALS YOU RECEIVED;  
03:29PM 2 RIGHT?

03:29PM 3 A. YES, I DID.

03:29PM 4 Q. AND YOU EVEN CITED MUCH OF IT IN THE MEMO YOU WROTE TO  
03:29PM 5 DR. KISSINGER; RIGHT?

03:29PM 6 A. I CITED SOME PARTS OF IT, YES.

03:29PM 7 Q. AND THE DOCUMENTATION INDICATES THAT THERANOS RUNS  
03:29PM 8 COMPREHENSIVE BLOOD TESTS FROM FINGERSTICK AND TESTS FROM  
03:29PM 9 OTHER -- FROM MICRO-SAMPLES OF OTHER MATRICES.

03:29PM 10 DO YOU SEE THAT?

03:29PM 11 A. I DO.

03:29PM 12 Q. AND SO FINGERSTICK WAS NOT THE ONLY MATRICES THAT THERANOS  
03:29PM 13 TESTED WITH ITS DEVICES; RIGHT?

03:29PM 14 MR. SCHENK: OBJECTION. MISSTATES THE DOCUMENT.

03:29PM 15 THE COURT: YOU'RE ASKING IF HE HAS KNOWLEDGE OF  
03:29PM 16 THAT, PERSONAL KNOWLEDGE?

03:30PM 17 BY MR. CAZARES:

03:30PM 18 Q. DID YOU UNDERSTAND THE DISCLOSURE INDICATED ON PAGE 280 TO  
03:30PM 19 BE INFORMING THE READER THAT THERANOS'S ANALYZERS TEST  
03:30PM 20 DIFFERENT MATRICES BEYOND JUST A FINGERSTICK?

03:30PM 21 A. I DID UNDERSTAND THAT THEY COULD TEST OTHER TYPES OF  
03:30PM 22 SAMPLES, YES.

03:30PM 23 Q. AND IF WE CAN TURN TO PAGE 281 OF 3387.

03:30PM 24 NOW, 281 ON EXHIBIT 3387 IDENTIFIES THE MEMBERS OF THE  
03:30PM 25 BOARD OF DIRECTORS FOR THERANOS AT THE TIME.

03:30PM 1 DO YOU SEE THAT?

03:30PM 2 A. I SEE IT.

03:30PM 3 Q. AND WHEN YOU LEARNED ABOUT -- WELL, LET ME STOP YOU.

03:30PM 4 BEFORE YOU RECEIVED THE DOCUMENTATION FROM MS. HOLMES

03:30PM 5 REFLECTED IN THIS EXHIBIT, DID YOU KNOW WHO THE MEMBERS OF THE

03:31PM 6 BOARD OF DIRECTORS AT THERANOS WERE, BEYOND DR. KISSINGER?

03:31PM 7 A. I THINK I WAS AWARE OF SOME OF THESE MEMBERS, BUT I

03:31PM 8 PROBABLY WASN'T AWARE OF ALL OF THEM.

03:31PM 9 Q. OKAY. AND CORRECT ME IF I'M WRONG, BUT EACH OF THE

03:31PM 10 INDIVIDUALS ON THIS LIST YOU WERE FAMILIAR WITH SEPARATE AND

03:31PM 11 APART FROM THERANOS; CORRECT?

03:31PM 12 A. MOST ALL OF THEM, YES.

03:31PM 13 Q. OKAY. GEORGE SHULTZ, FORMER SECRETARY OF STATE, YOU WERE

03:31PM 14 FAMILIAR WITH HIM?

03:31PM 15 A. YES.

03:31PM 16 Q. AND GARY ROUGHEAD, FORMER UNITED STATES ADMIRAL AND CHIEF

03:31PM 17 OF NAVAL OPERATIONS?

03:31PM 18 A. I'M NOT SURE I WAS FAMILIAR WITH HIM.

03:31PM 19 Q. BUT SENIOR OFFICER IN THE U.S. MILITARY, THAT WAS A

03:31PM 20 POSITIVE; CORRECT?

03:31PM 21 A. YES.

03:31PM 22 Q. DUE TO THE POTENTIAL DOD RELATIONSHIPS?

03:31PM 23 A. YES.

03:31PM 24 Q. AND THEN WILLIAM J. PERRY, MICHAEL AND BARBARA BERBERIAN

03:31PM 25 PROFESSOR AT STANFORD, FORMER U.S. SECRETARY OF DEFENSE? WERE

03:31PM 1 YOU FAMILIAR WITH MR. PERRY?

03:31PM 2 A. YES, I WAS.

03:32PM 3 Q. AND SAM NUNN?

03:32PM 4 A. YES.

03:32PM 5 Q. YOU'RE FAMILIAR WITH HIM AS WELL?

03:32PM 6 A. YES.

03:32PM 7 Q. RICHARD KOVACEVICH?

03:32PM 8 A. KOVACEVICH.

03:32PM 9 Q. KOVACEVICH. THANK YOU FOR CORRECTING ME.

03:32PM 10 GENERAL MATTIS?

03:32PM 11 A. YES.

03:32PM 12 Q. FAIR TO SAY IT WAS AN IMPRESSIVE BOARD OF DIRECTORS?

03:32PM 13 A. IT WAS.

03:32PM 14 Q. AND THAT ALSO CONTRIBUTED TO YOUR DECISION TO INVEST;

03:32PM 15 CORRECT?

03:32PM 16 A. YES.

03:32PM 17 Q. AND AT THE TIME YOU RECEIVED THESE INVESTOR MATERIALS, YOU

03:32PM 18 REALLY DIDN'T KNOW ANYTHING ABOUT MR. BALWANI'S BACKGROUND;

03:32PM 19 CORRECT?

03:32PM 20 A. I DID NOT.

03:32PM 21 Q. AND IF WE CAN TURN TO PAGE 289 OF 3387.

03:32PM 22 NOW, AT THIS PAGE OF THE INVESTOR MATERIALS YOU RECEIVED,

03:33PM 23 THERE'S A DESCRIPTION OF OVERVIEW OF CURRENT LABORATORY MARKET.

03:33PM 24 DO YOU SEE THAT?

03:33PM 25 A. I SEE IT.



03:33PM 1 Q. AND AGAIN, THERE'S A DESCRIPTION OF THE FIRST BULLET,  
03:33PM 2 "DECADES OLD BUSINESS PROCESSES -- AND TECHNOLOGY INVESTMENTS  
03:33PM 3 AROUND THOSE BUSINESS PROCESSES -- WITH VERY LITTLE MOTIVATION  
03:33PM 4 TO INNOVATE, HAS CREATED A DUOPOLY OF BUSINESSES BURDENED WITH  
03:33PM 5 INFRASTRUCTURE COSTS AND LITTLE TO NO R&D."

03:33PM 6 DO YOU SEE THAT?

03:33PM 7 A. I SEE THE STATEMENT, YES.

03:33PM 8 Q. AT THE TIME THAT YOU WERE DOING THIS REVIEW AND LEARNING  
03:33PM 9 ABOUT THERANOS PRIOR TO INVESTING, YOU CAME TO UNDERSTAND THAT  
03:33PM 10 THE PRIMARY PLAYERS IN THE U.S. LAB MARKET WERE LABCORP AND  
03:33PM 11 QUEST; CORRECT?

03:33PM 12 A. YES, I DID.

03:33PM 13 Q. AND THOSE WERE LARGE PUBLIC COMPANIES; CORRECT?

03:33PM 14 A. YES.

03:33PM 15 Q. AND YOU VIEWED AS ATTRACTIVE THERANOS'S OPPORTUNITY TO  
03:33PM 16 POSSIBLY TAKE MARKET SHARE FROM LABCORP AND QUEST; CORRECT?

03:34PM 17 A. YES.

03:34PM 18 Q. AND THAT MOTIVATED THE INVESTMENT?

03:34PM 19 A. IT WAS A FACTOR.

03:34PM 20 Q. IN PARTICULAR, DUE TO THIS PRICING OPPORTUNITY THAT  
03:34PM 21 THERANOS INTENDED TO PURSUE; IS THAT RIGHT?

03:34PM 22 A. YES.

03:34PM 23 Q. NOW IF YOU CAN TURN TO PAGE 299 OF THE PRESENTATION.

03:34PM 24 299 OF EXHIBIT 3387.

03:34PM 25 I THINK YOU WERE SHOWN SOME OF THIS BY MR. SCHENK.

03:34PM 1 AND, YOU KNOW, IT DESCRIBES "SAME TESTS, A WHOLE NEW  
03:34PM 2 APPROACH."

03:34PM 3 DO YOU SEE THAT?

03:35PM 4 PAGE 299?

03:35PM 5 A. I SEE IT, YES.

03:35PM 6 Q. AND ON THIS PAGE OF THE DOCUMENT MATERIALS, IT SAYS,  
03:35PM 7 "THERANOS RUNS ANY TEST AVAILABLE IN CENTRAL LABORATORIES, AND  
03:35PM 8 PROCESSES ALL SAMPLE TYPES."

03:35PM 9 DO YOU SEE THAT?

03:35PM 10 A. I DO.

03:35PM 11 Q. NOW, DO YOU RECALL BEING TOLD AT VARIOUS TIMES BY  
03:35PM 12 MS. HOLMES THAT THERANOS COULD NOT DO ALL TESTS ON ITS OWN  
03:35PM 13 TECHNOLOGY?

03:35PM 14 A. I DO NOT RECALL BEING TOLD THAT.

03:35PM 15 Q. IF YOU COULD TAKE A LOOK IN -- I LEFT ANOTHER BINDER NEAR  
03:35PM 16 YOUR FEET, I THINK TO THE RIGHT THERE.

03:35PM 17 A. YEAH, THIS ONE? VOLUME 2 (INDICATING)?

03:35PM 18 Q. YES.

03:35PM 19 IF YOU COULD TAKE A LOOK AT EXHIBIT 28040, 28040. IF YOU  
03:36PM 20 COULD LOOK AT PAGE 132.

03:36PM 21 A. OKAY.

03:36PM 22 Q. AND DO YOU RECALL BEING DEPOSED IN SOME LITIGATION RELATED  
03:36PM 23 TO THIS INVESTIGATION AND THERANOS?

03:36PM 24 A. I DO.

03:36PM 25 Q. AND AT THE TIME YOU WERE DEPOSED, YOU WERE ASKED QUESTIONS

03:36PM 1 ABOUT THERANOS; CORRECT?

03:36PM 2 A. I WAS.

03:36PM 3 Q. AND THE QUESTIONS -- YOU WERE DEPOSED UNDER OATH; CORRECT?

03:36PM 4 A. I WAS.

03:36PM 5 Q. AND YOU DID YOUR BEST TO TELL THE TRUTH AT THE TIME?

03:36PM 6 A. YES, I DID.

03:36PM 7 Q. AND IF YOU COULD TAKE A LOOK AT LINES 16 TO 23 AT

03:36PM 8 PAGE 132.

03:37PM 9 A. I SEE IT.

03:37PM 10 Q. AND DOES THAT REFRESH YOUR RECOLLECTION THAT YOU WERE TOLD

03:37PM 11 THAT THERANOS COULD NOT DO ALL TESTS ON ITS OWN FINGERSTICK

03:37PM 12 TECHNOLOGY?

03:37PM 13 A. I DON'T BELIEVE IT SAYS THAT.

03:37PM 14 Q. AND YOU DON'T RECALL BEING TOLD THAT?

03:37PM 15 A. I DO RECALL BEING TOLD THIS, BUT -- I DO RECALL BEING TOLD

03:37PM 16 WHAT I SAID RIGHT HERE, BUT I DON'T -- I DON'T INTERPRET WHAT

03:37PM 17 YOU'RE SAYING TO BE CONSISTENT WITH IT.

03:37PM 18 Q. SO YOU WERE TOLD THAT THERANOS AT VARIOUS TIMES --

03:37PM 19 MR. SCHENK: EXCUSE ME. OBJECTION.

03:37PM 20 THE COURT: EXCUSE ME. ARE WE ON THE SAME PAGE?

03:37PM 21 MR. CAZARES: YES, SIR.

03:37PM 22 THE WITNESS: MAYBE WE'RE NOT. PAGE 132?

03:37PM 23 MR. CAZARES: 132, LINES 16 TO 23.

03:37PM 24 THE COURT: 28040?

03:38PM 25 MR. CAZARES: YES. I'M NOT SURE I HAVE THE RIGHT

03:38PM 1 CITE. I'LL MOVE ON, YOUR HONOR.

03:38PM 2 MR. SCHENK: YOUR HONOR, I WOULD MOVE THEN TO STRIKE  
03:38PM 3 THE PRIOR QUESTIONS ABOUT PRIOR TESTIMONY.

03:38PM 4 MR. CAZARES: NO OBJECTION.

03:38PM 5 THE COURT: THE PRIOR QUESTION AND ANY ANSWER,  
03:38PM 6 COLLOQUY, IS STRICKEN, LADIES AND GENTLEMEN.

03:38PM 7 BY MR. CAZARES:

03:38PM 8 Q. IF YOU COULD PUT UP ON THE SCREEN PAGE 310 OF 3387.

03:39PM 9 NOW, IN THE SAME INVESTMENT BINDER THAT YOU WERE PROVIDED  
03:39PM 10 BY MS. HOLMES ON THIS PAGE WAS A DESCRIPTION OF "NATIONAL  
03:39PM 11 RETAIL FOOTPRINT AND HEALTH PLAN PARTNERSHIPS THROUGHOUT THE  
03:39PM 12 UNITED STATES FOR AN UNPRECEDENTED INFRASTRUCTURE WHICH EXCEEDS  
03:39PM 13 THAT OF ANY COMMERCIAL LABORATORY IN TODAY'S MARKET."

03:39PM 14 DO YOU SEE THAT?

03:39PM 15 A. I SEE IT BUT I'M NOT SURE WHAT BOOK WE'RE IN.

03:39PM 16 Q. IT'S 3387. I'M NO LONGER IN THE STATEMENTS BOOK, SIR.

03:39PM 17 A. OH, OKAY.

03:39PM 18 Q. SORRY ABOUT THAT. I DIDN'T MEAN TO RUSH YOU.

03:39PM 19 SO WE'RE BACK INTO DOCUMENT 3387 --

03:39PM 20 A. YES.

03:39PM 21 Q. -- WHICH IS THE INVESTOR BINDER?

03:39PM 22 A. WHAT PAGE?

03:39PM 23 Q. AND WE ARE AT PAGE 310.

03:39PM 24 A. I SEE IT.

03:39PM 25 Q. AND IT'S ALSO UP ON THE SCREEN.

03:39PM 1 AND ON THIS PAGE IT DESCRIBES "NATIONAL RETAIL FOOTPRINT  
03:40PM 2 AND HEALTH PLAN PARTNERSHIPS THROUGHOUT THE UNITED STATES FOR  
03:40PM 3 AN UNPRECEDENTED INFRASTRUCTURE WHICH EXCEEDS THAT OF ANY  
03:40PM 4 COMMERCIAL LABORATORY IN TODAY'S MARKET."

03:40PM 5 DO YOU SEE THAT?

03:40PM 6 A. I DO.

03:40PM 7 Q. AND NOW, YOU UNDERSTAND THIS WAS FUTURE LOOKING  
03:40PM 8 PERSPECTIVE AND IT WASN'T A DESCRIPTION OF THERANOS'S THEN  
03:40PM 9 BUSINESS; CORRECT?

03:40PM 10 A. THAT'S THE WAY I WOULD HAVE UNDERSTOOD IT, YES.

03:40PM 11 Q. IS IT FAIR TO SAY THAT YOU UNDERSTOOD THAT THERANOS'S  
03:40PM 12 RELATIONSHIP WITH WALGREENS WAS EVOLVING AND THE ROLLOUT INTO  
03:40PM 13 WALGREENS STORES BEYOND THE THEN 30 STORES WAS GOING TO EVOLVE  
03:40PM 14 OVER TIME; CORRECT?

03:40PM 15 A. YES.

03:40PM 16 Q. AND FAIR TO SAY THAT YOU UNDERSTOOD THAT THE SPEED OF THAT  
03:40PM 17 ROLLOUT WAS KIND OF DEPENDENT IN PART ON WALGREENS AS WELL AS  
03:40PM 18 THERANOS; CORRECT?

03:40PM 19 A. I WOULD HAVE UNDERSTOOD THAT, YES.

03:40PM 20 Q. AND YOU UNDERSTOOD AT THE TIME THAT IN THIS SORT OF  
03:40PM 21 UNDERTAKING, THIS MASSIVE UNDERTAKING, THERE IS EXECUTION RISK?

03:41PM 22 A. YES.

03:41PM 23 Q. AND SOME OF THAT EXECUTION RISK CAN RELATE TO THE ABILITY  
03:41PM 24 OF THE PARTNERS TO ACTUALLY BUILD OUT THESE STORES BEYOND THE  
03:41PM 25 ARIZONA MARKET; CORRECT?

03:41PM 1 A. I WOULD HAVE UNDERSTOOD THAT, YES.

03:41PM 2 Q. AND PART OF THE EXECUTION RISK WOULD ALSO RELATE TO THE

03:41PM 3 ABILITY TO HIRE PERSONNEL TO ACTUALLY DO THIS WORK?

03:41PM 4 A. YES.

03:41PM 5 Q. AND PART OF THE EXECUTION RISK WOULD ALSO IN SOME WAY

03:41PM 6 RELATE TO, AGAIN, THERANOS'S ABILITY TO PERFORM THE TESTS;

03:41PM 7 CORRECT?

03:41PM 8 A. I GUESS.

03:41PM 9 Q. OKAY.

03:41PM 10 A. BUT THAT -- NO. I GUESS. I MEAN, I DIDN'T UNDERSTAND

03:41PM 11 THAT TO BE PART OF THE RISK, BUT --

03:41PM 12 Q. WHEN YOU INVESTED, YOU UNDERSTOOD THAT THERANOS WAS IN 30

03:41PM 13 STORES; RIGHT?

03:41PM 14 A. THAT'S CORRECT.

03:41PM 15 Q. AND YOU UNDERSTAND THAT THERE'S A SIGNIFICANT DIFFERENCE

03:41PM 16 IN SCALE IN SELLING A PRODUCT FROM 30 STORES TO, LET'S SAY,

03:41PM 17 8,000 NATIONWIDE; RIGHT?

03:41PM 18 A. YES.

03:41PM 19 Q. SO EVEN IF, EVEN IF YOUR PRODUCT WORKS NICELY IN A SMALL,

03:42PM 20 COMPACT MARKET, SCALING IT NATIONWIDE MAY BE A DIFFERENT STORY;

03:42PM 21 RIGHT?

03:42PM 22 A. IT COULD BE, YES.

03:42PM 23 Q. OKAY. AND YOU UNDERSTOOD THAT AT THE TIME?

03:42PM 24 A. YES.

03:42PM 25 Q. NOW IF YOU COULD PUT UP PAGE 354 FROM THE INVESTOR BINDER.

03:42PM 1 I'M SORRY, 454.

03:42PM 2 AND 454, OVER THE NEXT COUPLE OF PAGES, REFLECTS REFERENCE

03:42PM 3 TO PATENTS HELD BY THERANOS; CORRECT?

03:42PM 4 A. YES.

03:42PM 5 Q. AND AGAIN, THIS WAS PART OF WHY YOU WERE INTERESTED IN

03:43PM 6 THERANOS, THE FACT THAT THEY APPEARED TO HAVE A SUBSTANTIAL

03:43PM 7 PATENT PORTFOLIO SUPPORTING ITS TECHNOLOGY; RIGHT?

03:43PM 8 A. I WAS INTERESTED BECAUSE OF THE TECHNOLOGY, AND CERTAINLY

03:43PM 9 YOU WOULD EXPECT THE PATENTS TO FOLLOW.

03:43PM 10 Q. AND YOU UNDERSTOOD THAT MUCH OF THE R&D WORK THAT THERANOS

03:43PM 11 DID TO DEVELOP ITS TECHNOLOGY WAS PERFORMED IN THE KIND OF

03:43PM 12 STEALTH MODE BEFORE THEY WENT PUBLIC WITH THEIR RETAIL

03:43PM 13 RELATIONSHIP WITH WALGREENS; CORRECT?

03:43PM 14 A. THAT IS CORRECT.

03:43PM 15 Q. AND THAT SEEMED NORMAL TO YOU; RIGHT?

03:43PM 16 A. YES.

03:43PM 17 Q. AND YOU UNDERSTOOD THERANOS'S EFFORTS TO MAINTAIN THE

03:43PM 18 CONFIDENTIALITY OF ITS TECHNOLOGY WAS APPROPRIATE; CORRECT?

03:43PM 19 A. YES.

03:43PM 20 Q. BECAUSE SOMETIMES COMPETITORS, FORMER EMPLOYEES CAN LEAK

03:44PM 21 INFORMATION THAT COULD PUT THERANOS AT A COMPETITIVE

03:44PM 22 DISADVANTAGE; CORRECT?

03:44PM 23 A. CORRECT.

03:44PM 24 Q. NOW, IF YOU COULD TAKE A LOOK AT PAGE 510 OF THE INVESTOR

03:44PM 25 BINDER.

03:44PM 1 NOW, 510 IS THE START OF ABOUT THREE OR FOUR PAGES OF SOME  
03:44PM 2 FINANCIAL INFORMATION.

03:44PM 3 DO YOU RECALL THAT?

03:44PM 4 A. I DO.

03:44PM 5 Q. AND YOU WERE ASKED SOME QUESTIONS BY MR. SCHENK ABOUT  
03:44PM 6 THESE (INDICATING) .

03:44PM 7 DO YOU RECALL THAT?

03:44PM 8 A. I DO.

03:44PM 9 Q. AND THE FIRST PAGE AT 510 REFLECTS THE SUMMARY  
03:44PM 10 CAPITALIZATION; IS THAT CORRECT?

03:44PM 11 A. THAT'S CORRECT.

03:44PM 12 Q. AND ESSENTIALLY THIS IS THE CAPITALIZATION INVESTED IN  
03:44PM 13 THERANOS BY ITS INVESTOR BASE; CORRECT?

03:44PM 14 A. THAT IS CORRECT.

03:44PM 15 Q. AND YOU UNDERSTOOD THIS CAP TABLE IS GOING UP TO 2013;  
03:44PM 16 RIGHT?

03:44PM 17 A. YES, THAT'S WHAT IT INDICATES.

03:45PM 18 Q. BUT BY THE TIME THAT YOU WERE TALKING WITH MS. HOLMES AND  
03:45PM 19 RECEIVING THESE MATERIALS, THERANOS WAS ENGAGING IN A NEW ROUND  
03:45PM 20 OF FUNDING; CORRECT?

03:45PM 21 A. THAT IS CORRECT.

03:45PM 22 Q. WHICH WOULD INDICATE TO YOU THAT THERANOS REQUIRED,  
03:45PM 23 DESIRED ADDITIONAL FUNDS IN ORDER TO EXECUTE ON THIS NATIONAL  
03:45PM 24 RETAIL ROLLOUT; CORRECT?

03:45PM 25 A. YOU KNOW, I CERTAINLY ASSUMED THEY WOULDN'T BE RAISING



03:45PM 1 FUNDS UNLESS THEY NEEDED FUNDS.

03:45PM 2 Q. AND IF YOU COULD TAKE A LOOK AT 511.

03:45PM 3 WELL, ACTUALLY SKIP THAT. 512.

03:45PM 4 AND 512 IS THE PROJECTED STATEMENT OF INCOME.

03:45PM 5 DO YOU SEE THAT?

03:45PM 6 A. I DO.

03:45PM 7 Q. AND YOU WERE ASKED SOME QUESTIONS BY MR. SCHENK ABOUT THE  
03:45PM 8 PROJECTED STATEMENT OF INCOME; CORRECT?

03:45PM 9 A. YES.

03:45PM 10 Q. AND YOU UNDERSTOOD THAT THESE ARE PROJECTIONS; RIGHT?

03:45PM 11 A. YES.

03:45PM 12 Q. THESE WERE NOT ACTUAL FINANCIAL RETURN FINANCIAL  
03:46PM 13 STATEMENTS; CORRECT?

03:46PM 14 A. THAT IS CORRECT.

03:46PM 15 Q. THESE ARE NOT AUDITED FINANCIAL STATEMENTS; CORRECT?

03:46PM 16 A. THAT IS CORRECT.

03:46PM 17 Q. THE KIND OF FINANCIAL STATEMENTS THAT YOU MIGHT GET IF YOU  
03:46PM 18 INVESTED IN A PUBLIC COMPANY; CORRECT?

03:46PM 19 A. CAN YOU REPHRASE THE QUESTION? I DIDN'T QUITE UNDERSTAND  
03:46PM 20 THAT.

03:46PM 21 Q. NO PROBLEM.

03:46PM 22 YOU'RE AWARE THAT TWICE -- OR ANNUALLY PUBLIC COMPANIES  
03:46PM 23 ARE REQUIRED TO REPORT, DISCLOSE KIND OF AUDITED FINANCIAL  
03:46PM 24 STATEMENTS; CORRECT?

03:46PM 25 A. CORRECT.

03:46PM 1 Q. WHEREAS A PRIVATE COMPANY ISN'T IN THAT SITUATION; DIRECT?

03:46PM 2 A. THAT'S CORRECT.

03:46PM 3 Q. AND YOU UNDERSTOOD THAT THIS PROJECTED STATEMENT OF INCOME

03:46PM 4 WAS NOT AN ACTUAL FINANCIAL STATEMENT; CORRECT? YOU UNDERSTOOD

03:46PM 5 THAT AT THE TIME?

03:46PM 6 A. I UNDERSTAND IT -- I UNDERSTOOD IT WAS A FINANCIAL

03:46PM 7 STATEMENT. IT WAS A PROJECTION FINANCIAL STATEMENT, BUT IT IS

03:46PM 8 A FINANCIAL STATEMENT.

03:46PM 9 Q. OKAY. BUT A PROJECTION?

03:46PM 10 A. IT'S A PROJECTION.

03:46PM 11 Q. OKAY. AND IF WE CAN TURN TO THE NEXT PAGE.

03:46PM 12 I DON'T THINK YOU WERE ASKED QUESTIONS ABOUT THIS, BUT

03:46PM 13 THIS IS THE PRO FORMA STATEMENT OF CASH FLOW.

03:47PM 14 DO YOU SEE THAT?

03:47PM 15 A. I DO.

03:47PM 16 Q. AND PRO FORMA, YOU UNDERSTAND THAT PRO FORMA IS KIND OF

03:47PM 17 ANOTHER WORD FOR PROJECTION; RIGHT?

03:47PM 18 A. GENERALLY, YES.

03:47PM 19 Q. AND THEN IF WE CAN GO TO THE NEXT PAGE, 514 IN THE

03:47PM 20 DOCUMENTS THAT YOU WERE PROVIDED.

03:47PM 21 HERE WE'RE LOOKING AT THE BALANCE SHEET; IS THAT RIGHT?

03:47PM 22 CURRENT ASSETS, TOTAL ASSETS?

03:47PM 23 A. YES, THAT IS CORRECT.

03:47PM 24 Q. AND THE DOCUMENT INDICATES THAT IT'S THE BALANCE SHEET FOR

03:47PM 25 THE PERIOD ENDING JULY 14TH, 2014; RIGHT?

03:47PM 1 A. THAT IS CORRECT.

03:47PM 2 Q. WHICH IS ABOUT A MONTH BEFORE YOU RECEIVED THE INVESTOR

03:47PM 3 PACKET FROM MS. HOLMES; RIGHT?

03:47PM 4 A. THAT IS CORRECT.

03:47PM 5 Q. OKAY. AND DO YOU SEE AT THE TIME THERANOS HAD TOTAL

03:47PM 6 CURRENT ASSETS OF APPROXIMATELY \$196 MILLION?

03:48PM 7 DO YOU SEE THAT?

03:48PM 8 A. I DO.

03:48PM 9 Q. WITH ABOUT 162 MILLION IN CASH AND INVESTMENTS.

03:48PM 10 DO YOU SEE THAT?

03:48PM 11 A. I DO.

03:48PM 12 Q. AND TOTAL ASSETS OF ABOUT 245 MILLION.

03:48PM 13 DO YOU SEE THAT?

03:48PM 14 A. TOTAL ASSETS ARE 245 MILLION, YES.

03:48PM 15 Q. OKAY. AND I THINK YOU INDICATED IN YOUR NOTES THAT YOU

03:48PM 16 DIDN'T BELIEVE THERANOS HAD ANY OUTSTANDING DEBT; CORRECT?

03:48PM 17 A. I SAID NO MEANINGFUL DEBT.

03:48PM 18 Q. NO MEANINGFUL DEBT, SO NO SIGNIFICANT DEBT; CORRECT?

03:48PM 19 A. YES.

03:48PM 20 Q. YOU CAN TAKE THAT DOWN, MR. ALLEN.

03:48PM 21 IF YOU COULD TAKE A LOOK AT EXHIBIT 14119 IN THE

03:48PM 22 GOVERNMENT BINDER OF DOCUMENTS THAT YOU HAVE.

03:49PM 23 A. 14119?

03:49PM 24 Q. YES, 14119.

03:49PM 25 A. I DON'T SEEM TO HAVE SUCH A -- IN VOLUME 1? IN VOLUME 1?

03:49PM 1 Q. IT SHOULD BE IN THE BLACK BINDER?

03:49PM 2 A. OH, YOU --

03:49PM 3 Q. SORRY ABOUT THAT.

03:49PM 4 A. THESE WERE THE DOCUMENTS THAT WERE GIVEN TO ME BY THE

03:49PM 5 GOVERNMENT.

03:49PM 6 YOU'RE TALKING ABOUT THIS BLACK BINDER (INDICATING)?

03:49PM 7 Q. YES. SORRY ABOUT THAT.

03:49PM 8 A. THIS BINDER (INDICATING)?

03:49PM 9 Q. YES, THAT'S CORRECT. THE BLACK BINDER. I APOLOGIZE.

03:49PM 10 A. NO PROBLEM.

03:49PM 11 WHAT WAS THAT?

03:49PM 12 Q. 14119.

03:50PM 13 ARE WE THERE?

03:50PM 14 A. YEP.

03:50PM 15 Q. SO 14119 IS A SHORT EMAIL CHAIN, THE LATTER OF WHICH AT

03:50PM 16 THE TOP PAGE APPEARS TO BE FROM YOURSELF, I'M SORRY, FROM

03:50PM 17 MS. HOLMES TO YOU DATED SEPTEMBER 4, 2014.

03:50PM 18 DO YOU SEE THAT?

03:50PM 19 A. YES.

03:50PM 20 Q. AND BELOW THAT THERE IS ANOTHER MESSAGE FROM YOURSELF TO

03:50PM 21 MS. HOLMES.

03:50PM 22 DO YOU SEE THAT AS WELL?

03:50PM 23 A. THAT IS CORRECT.

03:50PM 24 Q. AND THE EARLIER MESSAGE IS SEPTEMBER 22ND, 2014?

03:50PM 25 A. CORRECT.

03:50PM 1 Q. AND THIS IS SUBSEQUENT TO YOUR RECEIPT OF THE INVESTOR  
03:50PM 2 MATERIALS THAT WE JUST TALKED ABOUT; RIGHT?

03:50PM 3 A. THAT'S CORRECT.

03:50PM 4 Q. OKAY.

03:50PM 5 MOVE TO ADMIT 14119, YOUR HONOR.

03:50PM 6 MR. SCHENK: NO OBJECTION.

03:50PM 7 THE COURT: IT'S ADMITTED. IT MAY BE PUBLISHED.

03:50PM 8 (DEFENDANT'S EXHIBIT 14119 WAS RECEIVED IN EVIDENCE.)

03:50PM 9 BY MR. CAZARES:

03:50PM 10 Q. AND IF YOU LOOK AT THE LOWER PORTION OF THE EXHIBIT,  
03:50PM 11 YOU'LL SEE THE MESSAGE ON SEPTEMBER 2ND FROM YOURSELF TO  
03:50PM 12 MS. HOLMES, AND IT APPEARS THAT YOU WROTE, "ELIZABETH,

03:51PM 13 "THANK YOU FOR THE EXTENSIVE MATERIALS ON THERANOS. I  
03:51PM 14 THOROUGHLY ENJOYED READING THE MATERIALS AND CAN'T TELL YOU HOW  
03:51PM 15 APPRECIATIVE AND THANKFUL I AM FOR THE OPPORTUNITY TO BECOME  
03:51PM 16 ONE OF YOUR SHAREHOLDERS."

03:51PM 17 DO YOU SEE THAT?

03:51PM 18 A. I DO.

03:51PM 19 Q. AND YOU WERE SINCERE WHEN YOU WROTE THAT TO MS. HOLMES;  
03:51PM 20 RIGHT?

03:51PM 21 A. YES, I WAS.

03:51PM 22 Q. BECAUSE YOU WERE IMPRESSED WITH THE WRITTEN MATERIALS?

03:51PM 23 A. I WAS.

03:51PM 24 Q. OKAY. AND YOU SAID, "I COULD NOT BE MORE IMPRESSED WITH  
03:51PM 25 WHAT YOU HAVE ACCOMPLISHED AND WHAT LIES AHEAD FOR THERANOS."

03:51PM 1 DO YOU SEE THAT?

03:51PM 2 A. I DO.

03:51PM 3 Q. AND BY "WHAT LIES AHEAD," SOME OF THAT WAS THIS WALGREENS  
03:51PM 4 RELATIONSHIP AND THE POTENTIAL OPPORTUNITY; RIGHT?

03:51PM 5 A. YES.

03:51PM 6 Q. YOU WROTE, "I SPOKE TO DR. KISSINGER EARLIER TODAY AND  
03:51PM 7 GAVE HIM MY THOUGHTS ON THE MATERIALS. I ALSO PREPARED AN  
03:51PM 8 OUTLINE OVER THE WEEKEND WITH MY THOUGHTS AND ANALYSIS, WHICH I  
03:51PM 9 AM SENDING TO HIM BY HAND AND HAVE ALSO SENT ALONG TO THE  
03:51PM 10 NIARCHOS FOUNDATION."

03:51PM 11 DO YOU SEE THAT?

03:51PM 12 A. I DO.

03:51PM 13 Q. AND THIS IS THAT DOCUMENT THAT YOU REVIEWED WITH  
03:51PM 14 MR. SCHENK, THE OUTLINE?

03:52PM 15 A. YES, THAT IS CORRECT.

03:52PM 16 Q. AND THEN YOU WROTE, "I HAVE A FEW QUESTIONS AND WANT TO  
03:52PM 17 FOLLOW UP ON YOUR OFFER OF A BRIEFING BUT THOUGHT I WOULD WAIT  
03:52PM 18 UNTIL I HAVE ANY FURTHER QUESTIONS THAT MIGHT BE RAISED BY THE  
03:52PM 19 NIARCHOS FOUNDATION PEOPLE AFTER THEY HAVE HAD A CHANCE TO  
03:52PM 20 REVIEW THE MATERIALS AND MY OUTLINE."

03:52PM 21 DO YOU SEE THAT?

03:52PM 22 A. I SEE THAT.

03:52PM 23 Q. AND THIS IS YOU KIND OF RESPONDING TO MS. HOLMES'S  
03:52PM 24 INVITATION TO ASK QUESTIONS; RIGHT?

03:52PM 25 A. CORRECT.

03:52PM 1 Q. AND THEN YOU WROTE, "WITH RESPECT TO THE WALTON FAMILY, I  
03:52PM 2 CHECKED IN WITH GREG PENNER BUT HE HAS NOT YET RECEIVED THE  
03:52PM 3 MATERIALS. HE HAS SIGNED THE CDA AND I WANTED TO CHECK TO BE  
03:52PM 4 SURE THAT ONE OF THE COPIES OF THE MATERIALS THAT CAME TO ME  
03:52PM 5 WAS NOT INTENDED TO BE FOR HIM. I HAVE ENCLOSED A COPY OF HIS  
03:52PM 6 ADDRESS CARD TO CONFIRM HIS ADDRESS."

03:52PM 7 DO YOU SEE THAT?

03:52PM 8 A. I DO.

03:52PM 9 Q. AND YOU'RE AWARE THAT ULTIMATELY MATERIALS WERE SENT TO  
03:52PM 10 MR. PENNER AS WELL?

03:52PM 11 A. I BELIEVE THEY WERE.

03:52PM 12 Q. AND IS IT CORRECT, SIR, WOULD YOU AGREE BY THIS TIME,  
03:53PM 13 SEPTEMBER 2ND, 2014, YOU HAD NEVER SPOKEN TO MR. BALWANI;  
03:53PM 14 CORRECT?

03:53PM 15 A. I HAD NOT TO MY KNOWLEDGE.

03:53PM 16 Q. IF WE CAN PUT UP ON THE SCREEN EXHIBIT 4197. I BELIEVE  
03:53PM 17 THIS IS ALREADY IN EVIDENCE FROM EARLIER TODAY.

03:53PM 18 THE COURT: IT IS.

03:53PM 19 MR. CAZARES: THANK YOU, YOUR HONOR.

03:53PM 20 Q. 4197 IS THE COVER LETTER AND MEMO TO DR. KISSINGER.

03:53PM 21 DO YOU RECALL THAT, MR. MOSLEY?

03:53PM 22 A. I DO.

03:53PM 23 Q. OKAY. AND IN THE COVER LETTER ANYWAY, YOU REFERENCE THE  
03:53PM 24 FACT THAT MS. HOLMES WAS CAREFUL ABOUT OBTAINING NONDISCLOSURE  
03:54PM 25 AGREEMENTS BEFORE PROVIDING ANY IN DEPTH INFORMATION ABOUT

03:54PM 1

THERANOS.

03:54PM 2

DO YOU RECALL THAT?

03:54PM 3

A. YES.

03:54PM 4

Q. AND I WON'T GO OVER THE REST OF THE LETTER, BUT BASICALLY

03:54PM 5

YOU INDICATED THAT YOU WERE GOING TO GET CDA'S FROM ANYONE YOU

03:54PM 6

SHARED THE MEMO WITH; CORRECT?

03:54PM 7

A. THAT IS CORRECT.

03:54PM 8

Q. AND YOU DID SO; CORRECT?

03:54PM 9

A. AND I DID SO.

03:54PM 10

Q. OKAY. IF WE CAN GO TO PAGE 2 OF THE EXHIBIT.

03:54PM 11

AND SOME OF THIS YOU REVIEWED WITH MR. SCHENK, BUT ON

03:54PM 12

PAGE 2 UNDER THE HEADER "QUALITY OF THE TECHNOLOGY/APPLICATION

03:55PM 13

AND PERFORMANCE."

03:55PM 14

DO YOU SEE THAT?

03:55PM 15

A. I DO.

03:55PM 16

Q. AND IN THE MEMO, I THINK YOU DESCRIBED EARLIER TODAY, BUT

03:55PM 17

YOU WROTE, "THERE IS SUBSTANTIAL DATA AND OTHER INFORMATION

03:55PM 18

ATTESTING TO THE QUALITY, PERFORMANCE, AND RELIABILITY OF THE

03:55PM 19

THERANOS TECHNOLOGY AND EQUIPMENT."

03:55PM 20

DO YOU SEE THAT?

03:55PM 21

A. I DO.

03:55PM 22

Q. OKAY. AND YOU WROTE, "THERE DOES NOT APPEAR TO BE ANY

03:55PM 23

SIGN OF ANY QUESTION ABOUT THE QUALITY, ACCURACY AND

03:55PM 24

RELIABILITY OF THERANOS'S BLOOD TESTING TECHNOLOGY. THE

03:55PM 25

INFORMATION SUPPORTING THESE CONCLUSIONS IS SUBSTANTIAL," AND



03:55PM 1 THEN YOU LIST SOME OF THE BASES FOR THE CONCLUSION; CORRECT?

03:55PM 2 A. I DO.

03:55PM 3 Q. OKAY. AND SOME OF THESE WE REVIEWED, BUT IN THE MEMO THE

03:55PM 4 FIRST ITEM THAT YOU IDENTIFY AS SUPPORTING THE BELIEF THAT THE

03:55PM 5 TECHNOLOGY WORKED WAS THE FACT THAT CMS WAS THE KIND OF

03:55PM 6 OVERSEER, REGULATOR, FOR THE CLIA LABORATORY; CORRECT?

03:56PM 7 A. THAT'S MY UNDERSTANDING, YES.

03:56PM 8 Q. AND THAT GAVE YOU SOME COMFORT IN MAKING THE INVESTMENT;

03:56PM 9 CORRECT?

03:56PM 10 A. YES, IT DID.

03:56PM 11 Q. AND IN THIS TIME PERIOD, THE LATE SUMMER, EARLY FALL 2014,

03:56PM 12 YOU'RE NOT AWARE OF ANY INDICATIONS OF PROBLEMS WITH RESPECT TO

03:56PM 13 THERANOS'S CLINICAL LAB; CORRECT?

03:56PM 14 A. I WAS NOT AWARE.

03:56PM 15 Q. AND THEN THE NEXT ENTRY, IN SUPPORT OF YOUR CONCLUSIONS,

03:56PM 16 YOU WROTE, "THERANOS HAS SUCCESSFULLY COMPLETE THE INSPECTIONS

03:56PM 17 BY THE NEW YORK DEPARTMENT OF HEALTH AND BY A NUMBER OF OTHER

03:56PM 18 NATIONALLY RECOGNIZED AGENCIES, ALL WITH THE HIGHEST POSSIBLE

03:56PM 19 RATINGS."

03:56PM 20 DO YOU SEE THAT?

03:56PM 21 A. I DO.

03:56PM 22 Q. AND THAT'S A REFERENCE TO SOMETHING THAT YOU SAW IN THE

03:56PM 23 MATERIALS; CORRECT?

03:56PM 24 A. CORRECT.

03:56PM 25 Q. AND AT THE TIME WERE YOU AWARE THAT CLINICAL LABS

03:56PM 1 SOMETIMES HAVE DUAL REGULATORS, THEY HAVE CMS AND THEN STATE  
03:56PM 2 REGULATORY AGENCIES?

03:56PM 3 A. I WAS NOT AWARE OF THAT.

03:56PM 4 Q. OKAY. BUT YOU CITED THE FACT THAT THE NEW YORK DEPARTMENT  
03:57PM 5 OF HEALTH AND OTHERS HAD COMPLETED INSPECTIONS AT THERANOS;  
03:57PM 6 CORRECT?

03:57PM 7 A. CORRECT.

03:57PM 8 Q. AND SO THAT WAS NEW INFORMATION TO YOU AT THE TIME?

03:57PM 9 A. WHEN I GOT THE MATERIALS, YES.

03:57PM 10 Q. AND THEN YOU FOLLOWED WITH CITING THE PHARMACEUTICAL  
03:57PM 11 RELATIONSHIPS, 10 OF 15.

03:57PM 12 DO YOU SEE THAT?

03:57PM 13 A. I DO.

03:57PM 14 Q. AND THEN AGAIN WE GET TO YOU WROTE, "THERANOS HAS WORKED  
03:57PM 15 WITH A NUMBER OF HOSPITAL GROUPS. THESE INCLUDE CEDARS-SINAI."  
03:57PM 16 AND YOU'RE FAMILIAR WITH CEDARS-SINAI?

03:57PM 17 A. YES.

03:57PM 18 Q. A RENOWNED INSTITUTION; CORRECT?

03:57PM 19 A. CORRECT.

03:57PM 20 Q. HOSPITAL CORP OF AMERICA, HOSPITAL FOR SPECIAL SURGERY,  
03:57PM 21 AND THEN JOHNS HOPKINS, WHICH WE TALKED ABOUT EARLIER.

03:57PM 22 DO YOU SEE THAT?

03:57PM 23 A. I DO.

03:57PM 24 Q. AND IT'S THE RELATIONSHIPS IDENTIFIED IN THESE FOUR  
03:57PM 25 BULLETS TO THERANOS THAT GAVE YOU COMFORT; CORRECT?

03:57PM 1 A. THEY DID.

03:57PM 2 MR. CAZARES: YOUR HONOR, I'M AT A SPOT WHERE I'M  
03:57PM 3 GOING TO BE VEERING INTO OTHER MATERIALS. IT MIGHT BE A GOOD  
03:57PM 4 TIME.

03:57PM 5 THE COURT: THANK YOU. LET'S DO THAT.

03:57PM 6 LET'S TAKE OUR EVENING BREAK NOW, LADIES AND GENTLEMEN.  
03:57PM 7 WE'LL START AGAIN AT 9:00 O'CLOCK.

03:57PM 8 I MIGHT HAVE SOME QUESTIONS FOR THE LAWYERS, SO WE MIGHT  
03:58PM 9 NOT START UNTIL 9:30, JUST FAIR WARNING. BUT I'LL TRY TO KEEP  
03:58PM 10 MY QUESTIONS BRIEF FOR THEM. BUT 9:00 O'CLOCK.

03:58PM 11 SIR, 9:00 O'CLOCK TOMORROW TO RETURN.

03:58PM 12 THE WITNESS: THANK YOU.

03:58PM 13 THE COURT: PLEASE REMEMBER THE ADMONITION. DON'T  
03:58PM 14 TRY TO LEARN ANYTHING ABOUT THIS CASE, LISTEN, READ OR DISCUSS  
03:58PM 15 THIS CASE WITH ANYONE.

03:58PM 16 HAVE A GOOD EVENING. WE'LL SEE YOU TOMORROW. THANK YOU.

03:58PM 17 (JURY OUT AT 3:58 P.M.)

03:59PM 18 THE COURT: PLEASE BE SEATED. THANK YOU.

03:59PM 19 THE WITNESS: SHOULD I STAY?

03:59PM 20 THE COURT: OH, NOT YOU, SIR. SORRY. YOU'RE FREE  
03:59PM 21 TO GO. SORRY.

03:59PM 22 ALL RIGHT. THANK YOU. THE RECORD SHOULD REFLECT THAT OUR  
03:59PM 23 JURY HAS LEFT FOR THE EVENING.

03:59PM 24 MR. MOSLEY HAS LEFT THE COURTROOM.

03:59PM 25 ALL COUNSEL AND MR. BALWANI ARE PRESENT.

03:59PM 1 ANYTHING FURTHER BEFORE WE BREAK FOR THE NIGHT?

03:59PM 2 MR. BOSTIC.

03:59PM 3 MR. BOSTIC: IF THE COURT HAS A MOMENT JUST TO  
03:59PM 4 DISCUSS THE SCHEDULE FOR TOMORROW?

03:59PM 5 THE COURT: SURE.

03:59PM 6 MR. BOSTIC: WE ARE CONSIDERING WHICH WITNESSES TO  
03:59PM 7 CALL TOMORROW, AND WE HAVE A TRAVEL DECISION TO MAKE ABOUT AN  
03:59PM 8 OUT OF TOWN WITNESS. ONCE BEFORE I ASKED THE COURT AND THE  
03:59PM 9 DEFENSE TO HELP US MAKE THE DECISION, AND I WAS WONDERING IF I  
03:59PM 10 COULD DO THE SAME THING.

03:59PM 11 THE COURT: SURE.

03:59PM 12 MR. BOSTIC: SO MR. MOSLEY NEEDS TO FINISH HIS  
03:59PM 13 CROSS-EXAMINATION, THERE MAY BE REDIRECT.

04:00PM 14 AND THEN TOMORROW THE GOVERNMENT IS CONSIDERING CALLING  
04:00PM 15 DR. LYNETTE SAWYER, CHRIS LUCAS, AND ALAN EISENMAN.

04:00PM 16 MR. LUCAS IS NOT YET IN TOWN AND IS CONSIDERING WHETHER TO  
04:00PM 17 FLY IN FIRST THING TOMORROW MORNING.

04:00PM 18 SO I THINK THE QUESTION IS, WILL WE NEED MR. LUCAS TO FLY  
04:00PM 19 IN IN THE MORNING TO BE AVAILABLE TO TESTIFY IN THE AFTERNOON,  
04:00PM 20 OR NOT?

04:00PM 21 I THINK IT WOULD BE HELPFUL TO KNOW HOW MUCH MORE  
04:00PM 22 CROSS-EXAMINATION IS STILL ON DECK FOR THE PENDING WITNESS, AND  
04:00PM 23 IF THE DEFENSE COULD LET US KNOW HOW MUCH TIME THEY EXPECT TO  
04:00PM 24 TAKE WITH THE OTHER WITNESSES AS WELL.

04:00PM 25 THE COURT: OKAY.

04:00PM 1 MR. COOPERSMITH, YOU'RE IN THE DRIVER'S SEAT HERE.

04:00PM 2 MR. COOPERSMITH: WELL, THAT'S ALWAYS NICE,  
04:00PM 3 YOUR HONOR. THANK YOU.

04:00PM 4 SO WITH REGARD TO -- IT SOUNDS LIKE, FROM MR. BOSTIC, THE  
04:00PM 5 NEXT WITNESS AFTER MR. MOSLEY IS CHRIS LUCAS.

04:00PM 6 DID I HEAR THAT CORRECTLY?

04:00PM 7 MR. BOSTIC: IT DEPENDS, YOUR HONOR. IT COULD BE  
04:00PM 8 MR. LUCAS OR DR. SAWYER.

04:01PM 9 THE COURT: IS DR. SAWYER LOCAL?

04:01PM 10 MR. BOSTIC: SHE'S LOCAL.

04:01PM 11 THE COURT: RIGHT, RIGHT.

04:01PM 12 MR. COOPERSMITH: I JUST WANT TO MAKE SURE I  
04:01PM 13 UNDERSTAND THE QUESTION, WHICH WE'RE HAPPY TO TRY TO ANSWER, IS  
04:01PM 14 THAT IF MR. MOSLEY IS GOING TO GO THE WHOLE DAY TOMORROW, THEY  
04:01PM 15 WOULD NOT BRING MR. LUCAS IN FROM OUT OF TOWN, OR IF --

04:01PM 16 MR. BOSTIC: SO IF MR. MOSLEY WOULD TAKE UP -- IF  
04:01PM 17 THE COMBINATION OF MR. MOSLEY AND MR. EISENMAN, FOR EXAMPLE,  
04:01PM 18 WOULD TAKE UP ALL OF THE DAY TOMORROW, THEN WE MIGHT TELL  
04:01PM 19 MR. LUCAS NOT TO FLY INTO TOWN, AND WE MIGHT TELL DR. SAWYER  
04:01PM 20 NOT TO TRAVEL TO THE COURTHOUSE.

04:01PM 21 MR. COOPERSMITH: I SEE, YOUR HONOR. THAT'S  
04:01PM 22 HELPFUL.

04:01PM 23 SO I'LL -- MR. CAZARES, I'M SURE, WILL JUMP UP AND YELL AT  
04:01PM 24 ME IF I'M SPEAKING OUT OF TURN, BUT I DON'T BELIEVE THAT  
04:01PM 25 MR. MOSLEY IS GOING TO OCCUPY THE ENTIRE DAY. I SUSPECT IT

04:01PM 1 WILL BE SOME OF THE MORNING.

04:01PM 2 I SEE NODDING IN THE REFLECTIVE GLASS HERE, SO THAT SOUNDS  
04:01PM 3 RIGHT.

04:01PM 4 SO THEN MS. SAWYER, I BELIEVE -- WELL, OBVIOUSLY WE HAVE  
04:02PM 5 NOT SEEN THE GOVERNMENT'S DIRECT, AND I THINK MS. WALSH WILL BE  
04:02PM 6 TAKING THAT WITNESS. I DON'T EXPECT THAT TO BE A LENGTHY  
04:02PM 7 EXAMINATION. I SUSPECT IT WON'T BE LENGTHY ON EITHER SIDE, BUT  
04:02PM 8 MR. BOSTIC CAN SPEAK TO THAT.

04:02PM 9 SO I THINK IT'S LIKELY THE GOVERNMENT WILL NEED TO FILL UP  
04:02PM 10 THE TIME WITH ANOTHER WITNESS, AND IF IT'S MR. EISENMAN, IT'S  
04:02PM 11 LIKELY THAT WE WOULDN'T GET TO YET EVEN ANOTHER WITNESS AFTER  
04:02PM 12 THAT, IF THAT ANSWERS MR. BOSTIC'S QUESTION. I HOPE IT DOES.

04:02PM 13 THE COURT: RIGHT. MY SENSE IS DR. SAWYER -- THIS  
04:02PM 14 IS FROM PAST EXPERIENCE -- WILL NOT BE AN EXTENSIVE WITNESS. I  
04:02PM 15 DON'T THINK SHE WILL BE HOURS.

04:02PM 16 MR. COOPERSMITH: I THINK THAT'S RIGHT, YOUR HONOR.

04:02PM 17 THE COURT: AND THEN THE QUESTION IS, DO YOU PUT  
04:02PM 18 MR. EISENMAN ON NEXT OR FLY OUT MR. LUCAS?

04:02PM 19 MR. BOSTIC: AND I THINK IN THAT CASE, BECAUSE  
04:02PM 20 MR. EISENMAN WILL BE IN TOWN, WE'LL CALL MR. EISENMAN AND SAVE  
04:02PM 21 MR. LUCAS THE TRIP.

04:02PM 22 AND JUST TO CONFIRM, I THINK THE DIRECT EXAM FOR  
04:03PM 23 DR. SAWYER WILL BE ABOUT HALF AN HOUR OR LESS, SO IF THE CROSS  
04:03PM 24 IS ON THAT SAME SCALE, THEN I THINK WE'RE ON THE SAME PAGE.

04:03PM 25 THE COURT: AND MR. EISENMAN, MY SENSE IS THAT HIS

04:03PM 1 EXAMINATION WILL PROBABLY REQUIRE A LITTLE MORE TIME, I THINK,  
04:03PM 2 CERTAINLY MORE THAN DR. SAWYER'S.

04:03PM 3 MR. BOSTIC: YES, YOUR HONOR. HIS DIRECT WILL BE  
04:03PM 4 ABOUT 90 MINUTES, SIMILAR TO WHAT WAS OBSERVED IN THE HOLMES  
04:03PM 5 TRIAL.

04:03PM 6 THE COURT: RIGHT. SO HE PROBABLY WILL BE -- IF WE  
04:03PM 7 GET THROUGH SAWYER TOMORROW -- WE FINISH MR. MOSLEY TOMORROW  
04:03PM 8 MORNING, I'M THINKING MID-MORNING OR SOMETHING, MAYBE BY OUR  
04:03PM 9 FIRST BREAK, DOES THAT SOUND REASONABLE?

04:03PM 10 I SEE HIS LAWYER HERE. HE WOULD LIKE TO KNOW, TOO.

04:03PM 11 MR. CAZARES: I THINK IT'S VERY POSSIBLE WE WILL  
04:03PM 12 FINISH BOTH SIDES BY THE FIRST BREAK.

04:03PM 13 THE COURT: OKAY. GREAT. THANK YOU. THAT'S  
04:03PM 14 HELPFUL.

04:03PM 15 AND THEN THE DECISION IS, IS IT DR. SAWYER OR EISENMAN?

04:03PM 16 MR. BOSTIC: I'M NOT SURE IT MATTERS BETWEEN THOSE  
04:03PM 17 TWO, YOUR HONOR, WHO IS NEXT IF THOSE TWO ARE BOTH CONFIRMED  
04:03PM 18 FOR TOMORROW.

04:03PM 19 THE COURT: I THINK THAT WILL FILL OUR DAY TOMORROW.

04:04PM 20 MR. BOSTIC: IT SOUNDS LIKE THAT'S WHERE WE'RE  
04:04PM 21 LANDING.

04:04PM 22 MR. COOPERSMITH: THAT SOUNDS RIGHT. OBVIOUSLY WITH  
04:04PM 23 ALL OF THE UNUSUAL CAVEATS, BECAUSE TESTIMONY IS UNPREDICTABLE,  
04:04PM 24 BUT I DO AGREE THAT THAT'S THE LIKELY WAY.

04:04PM 25 THE COURT: JUST FROM MY PERSPECTIVE, I DON'T SEE

04:04PM 1 ANY REASON TO HAVE THE GOVERNMENT FLY MR. LUCAS IN TONIGHT, OR  
04:04PM 2 TOMORROW MORNING FOR THAT LATER.

04:04PM 3 MR. COOPERSMITH: THAT SOUNDS RIGHT, ESPECIALLY  
04:04PM 4 SINCE, IF HE GOT ON AT ALL, WHICH IS DOUBTFUL, IT WOULD BE  
04:04PM 5 PRETTY BRIEF. SO TO MAKE A SPECIAL TRIP FOR HALF AN HOUR OR  
04:04PM 6 SOMETHING DOESN'T SOUND REASONABLE.

04:04PM 7 MR. BOSTIC: UNDERSTOOD. THAT'S HELPFUL.  
04:04PM 8 THANK YOU, YOUR HONOR.

04:04PM 9 THE COURT: OKAY. HAVE WE ANSWERED -- OR HAVE WE  
04:04PM 10 SOLVED ALL OF THE WORLD'S PROBLEMS?

04:04PM 11 MR. BOSTIC: ALL OF MY QUESTIONS, YOUR HONOR.

04:04PM 12 MR. COOPERSMITH: AND WE'LL SEE YOUR HONOR AT 8:30  
04:04PM 13 TOMORROW?

04:04PM 14 THE COURT: I HOPE SO. WHAT HAVE YOU HEARD?

04:04PM 15 MR. COOPERSMITH: I'M THINKING YES, SO THAT'S GOOD  
04:04PM 16 TO HEAR. THANK YOU.

04:04PM 17 THE COURT: ALL RIGHT. WE'LL SEE YOU THEN. THANK  
04:04PM 18 YOU.

04:04PM 19 MR. BOSTIC: THANK YOU.

04:04PM 20 (COURT ADJOURNED AT 4:04 P.M.)

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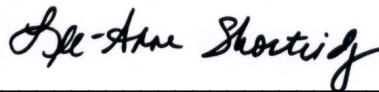
CERTIFICATE OF REPORTERS

WE, THE UNDERSIGNED OFFICIAL COURT REPORTERS OF THE  
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO  
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.



IRENE RODRIGUEZ, CSR, CRR  
CERTIFICATE NUMBER 8076



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: MAY 10, 2022